TUITION TAX CREDIT PROPOSALS

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2673

JULY 16, 1982

Printed for the use of the Committee on Finance

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TUITION TAX CREDIT PROPOSALS

FRIDAY, JULY 16, 1982

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m. in room 2221, Dirksen Senate Office Building, Hon. Robert J. Dole (chairman) presiding.

Present: Senators Dole, Packwood, Roth, Durenberger, Grassley, Moynihan, and Bradley.

Also present: Senator Hollings.

[The press release announcing the hearing, description of S. 2673 by the Joint Committee on Taxation, and the prepared statements of Senators Dole and Moynihan follow:]

Press Release No. 82-145

PRESS RELEASE

FOR IMMEDIATE RELEASE
July 2, 1982

UNITED STATES SENATE
COMMITTEE ON FINANCE
2227 Dirksen Senate
Office Building

FINANCE COMMITTEE SETS HEARING ON TUITION TAX CREDIT PROPOSAL, JOBS TRAINING CREDIT PROPOSAL

Senator Bob Dole, Chairman of the Senate Committee on Finance, announced today that the Committee will hold a hearing on Friday, July 16, 1982, on S. 2673, the Administration's tuition tax credit bill introduced by Senator Dole for himself, Senator Roth and others.

Chairman Dole stated that the Finance Committee, although presently wholly occupied with moving a deficit-reduction package through the Senate as soon as possible, would not ignore this important equity in education initiative. Chairman Dole also indicated that the Committee was especially interested in receiving testimony on the provisions of the bill denying a credit for tuition paid to schools that discriminate on the basis of race. "We must assure ourselves," the Senator stated, "that this provision does not in any way contradict our fundamental national policy against racial discrimination in education."

The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

In addition, the Committee will receive testimony on S. 2224, legislation introduced by Senator Arlen Specter (R.-Pa.) to provide a tax credit for contributions to charitable organizations that provide job training for handicapped and economically disadvantaged individuals and displaced workers.

Consolidated testimony.--Senator Dole urges all witnesses who have a common position or who have the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than they might otherwise obtain. Senator Dole urges that all witnesses exert a maximum effort to consolidate and coordinate their statements.

(3) All witnesses must include with their written statements a summary of the principal points included in the statement.

(4) Oral presentations should be limited to a short discussion of principal points included in the one-page summary. Witnesses must not read their written statements. The entire prepared statement will be included in the record of the hearing.

(5) Not more than 5 minutes will be allowed for the oral summary.

Requests to testify.--Witnesses who desire to testify at the hearing on July 16, 1982, must submit a written request to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, to be received not later than 10 a.m. on Friday, July 9, 1982. Witnesses will be notified as soon as practicable thereafter whether it has been possible to schedule them to present oral testimony. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such a case, a witness should notify the Committee as soon as possible of his inability to appear.

Legislative Reorganization Act.--Senator Dole stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Written statements.--Witnesses who are not scheduled to make oral presentations, and others who desire to present their views to the Committee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five copies to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Friday, July 30, 1982.

P.R. #82-145

DESCRIPTION OF S. 2673
THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982
Relating to
Tuition Tax Credit for Elementary and Secondary Education

Scheduled for a Hearing
on
July 16, 1982
by the
Senate Committee on Finance

Prepared by the Staff
of the
Joint Committee on Taxation
July 15, 1982
JCX-31-82

INTRODUCTION

This document describes S. 2673 (Senators Dole, Roth, and D'Amato), which would provide a tax credit for tuition paid to elementary and secondary schools that have racially nondiscriminatory policies. The bill is scheduled for a hearing on July 16, 1982, by the Senate Committee on Finance.

Last year (June 3 and 4, 1981), the Finance Subcommittee on Taxation and Debt Management held a hearing on S. 550 (Senators Packwood, Moynihan, Roth, Durenberger, Heinz, and others), which would provide a refundable tax credit for 50 percent of tuition paid to a private elementary or secondary school, or to a public or private college or vocational school.[1]

The first part of the document is a summary. This is followed in the second part with a more detailed description of S. 2673.

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[1] For a more complete discussion of that bill see "Description of S. 550, Tuition Tax Relief Act of 1981" (JCS-24-81, May 30, 1981).

I. SUMMARY

Present law provides no tax credit or deduction for personal educational expenses.

The bill would provide a nonrefundable credit for 50 percent of tuition expenses paid to elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit would be $100 in 1983, $300 in 1984, and $500 in 1985 and subsequent years. The maximum credit amount would be phased down for taxpayers with adjusted gross income of greater than $50,000, and no credit would be allowed for taxpayers with adjusted gross income of $75,000 or more.

For tuition expenses to be creditable, a school would have to file annually with the Treasury a statement indicating that it has not followed a racially discriminatory policy. (A copy of this statement would have to be furnished to each individual who pays tuition to the school.) Furthermore, the bill would authorize the Attorney General, upon petition by an individual who claims to have been racially discriminated against, to seek a declaratory judgment, in a U.S. district court, that a school has a racially discriminatory policy.

The provisions of the bill would apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.

II. DESCRIPTION OF S. 2673

The Educational Opportunity and Equity Act of 1982

Present Law

Present law provides no tax credit or deduction for personal educational expenses. However, in certain cases, taxpayers are entitled to a personal exemption for a dependent that they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income amounts received as scholarships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" education expenses may be deducted as ordinary and necessary business expenses.

Explanation of the Bill

Congressional findings

The bill contains a policy statement that sets forth several propositions that would be based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill is to enhance equality of educational opportunity, diversity, and choice for all Americans and that the bill will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

Credit for tuition expenses

Under the bill, an individual would be allowed to claim a nonrefundable tax credit for 50 percent of the tuition expenses paid during the taxable year to one or more educational institutions for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions.1/

1/ Dependents, the payment of whose tuition expenses would qualify for credit under the bill, would be any one of the following individuals over half of whose support is received from the taxpayer: (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household. Except for the taxpayer's children, these individuals must have less than $1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions and qualified tuition expenses

The credit would be available only with respect to tuition paid to certain educational institutions. An educational institution would have to meet the following requirements in order for tuition paid to it to be a creditable expense:

(1) It must provide a full-time program of elementary or secondary education;

(2) It must be a privately operated, not-for-profit, day or residential school; and

(3) It must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).2/ (Under the bill, church schools that currently are exempt from the requirement that they notify the Internal Revenue Service of their applications for recognition of tax-exempt status would continue to be so exempt.)

Tuition expenses eligible for the credit would be tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education above the twelfth-grade level would not be eligible for the credit.

2/ These are organizations that are organized and operated exclusively for religious, charitable, educational, and other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

Limitations on credit amount

The credit would be subject both to a maximum dollar amount and a phase-out based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum phase-out rate would be phased in over a period of three calendar years.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent would be:

(1) $100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;
(2) $300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and
(3) $500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

The maximum credit amount would be reduced by a specified percentage of the amount by which the taxpayer's adjusted gross income for the taxable year exceeds $50,000 ($25,000 in the case of a married individual filing a separate return). The phase-out rate would be 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983; 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and 2.0 percent for each taxable year of the taxpayer beginning on or after January 1, 1985. Thus, a taxpayer with adjusted gross income of $75,000 or more ($50,000 in the case of a married individual filing a separate return) would receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses would be reduced by certain amounts paid to the taxpayer or his dependents. These amounts would be: (1) amounts received from a tax-free scholarship or fellowship grant; (2) certain Veterans benefits; and (3) other tax-exempt educational financial assistance (except for excludable gifts, bequests, devises, or inheritances).

In addition, the bill provides that a taxpayer could not claim any allowable deduction or credit for tuition expenses that have been taken into account in determining the allowable tuition tax credit. However, the taxpayer could elect not to claim the tuition tax credit and, instead, claim other allowable deductions or credits.

Declaratory judgment proceedings

The bill would allow no tax credit for tuition payments to schools that have racially discriminatory policies. Moreover, the bill would provide for a declaratory judgment proceeding for determining whether a school has a racially discriminatory policy.

Under the bill, a person who alleges that he has been discriminated against under a racially discriminatory policy of an educational institution could petition the Attorney General. The Attorney General would be authorized, upon a finding of good cause, to bring an action against the educational institution. Such action would be brought in the United States district court in the district in which the educational institution is located and would seek a declaratory judgment that the institution has followed a racially discriminatory policy and has, pursuant to that policy, discriminated against the person who filed the petition.

The person who alleges that racial discrimination has occurred would be required to file the petition with the Attorney General within 180 days after the alleged act of racial discrimination.

The Attorney General would be required, upon receipt of a petition, promptly to notify the educational institution, in writing, of the existence of the petition and the allegations contained therein. Before commencing a declaratory judgment action, the Attorney General also would be required to give the institution a fair opportunity to comment on the allegations made against it and to show that the racially discriminatory policy alleged in the petition either does not exist or has been abandoned.

The Attorney General could file a declaratory judgment action no later than one year after receiving a petition.

Disallowance of credit with respect to amounts paid to racially discriminatory institutions

In order for an individual to claim a credit with respect to tuition paid to any educational institution, the institution must file an annual nondiscrimination statement with the Secretary and must furnish a copy of such statement to each person who paid tuition expenses to the institution in the calendar year to which the statement relates. A taxpayer claiming the credit would have to attach the copy to his return.

The nondiscrimination statement would be required to declare that the educational institution has not followed a racially discriminatory policy during the calendar year and also must indicate whether the Attorney General has brought a declaratory judgment action against the institution during the current calendar year or either of the two preceding calendar years.

The annual statement must be filed with the Secretary at the end of the calendar year, and copies must be furnished to persons paying tuition no later than January 31 of the subsequent calendar year.

If an educational institution is found, in a declaratory judgment proceeding, to have followed a racially discriminatory policy, then no credit would be allowed for tuition expenses paid to the institution in the calendar year in which the Attorney General commenced the declaratory judgment action or in the two calendar years immediately succeeding that year. No credit, however, could be disallowed until the judgment in the declaratory judgment action becomes final. 3/ If tax credits are disallowed as a result of a declaratory judgment, then the period for assessing a deficiency attributable to such disallowance would not expire until three years after a final judgment.

Under the bill, an educational institution would have a racially discriminatory policy if it refuses, on account of race (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs.4/ A racially discriminatory policy

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3/ A judgment would become final when all parties to the action have exhausted all appellate review.

4/ The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of Goldsboro Christian Schools, Inc. v. United States (No. 81-1) and Bob Jones University v. United States (No. 81-3). For more detail on this issue see "Background Relating to the Effect of Racially Discriminatory Policies on the Tax-Exempt Status of Private Schools" (JCS-1-82, January 29, 1982).

would not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term "race" would include color or national origin.

The exclusive authority to enforce the prohibition against following a racially discriminatory policy would be vested in the Attorney General. The Secretary of the Treasury would have authority solely to receive annual nondiscrimination statements, to disallow credits with respect to institutions that fail to file nondiscrimination statements, to disallow credits to taxpayers who fail to attach copies of nondiscrimination statements to their returns, and to disallow credits with respect to payments to an institution against which a final judgment has been entered.

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits would not constitute Federal financial assistance to educational institutions or to the recipients thereof.

Effective Date

The bill would apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.

Revenue Effect

The bill is estimated to reduce fiscal year budget receipts by $32 million in 1983, $373 million in 1984, $854 million in 1985, $1,280 million in 1986, and $1,337 million in 1987.

STATEMENT OF CHAIRMAN DOLE ON TUITION TAX CREDITS

I AM PLEASED TO WELCOME SECRETARIES REGAN AND BELL, SENATOR HOLLINGS, AND INTERESTED MEMBERS OF THE PUBLIC, THIS MORNING TO TESTIFY ON S. 2673, THE TUITION TAX CREDIT BILL. THIS BILL IS A VERY IMPORTANT PIECE OF LEGISLATION, IMPORTANT TO THE ADMINISTRATION, IMPORTANT TO THE PARENTS OF ALL CHILDREN IN SCHOOLS, PUBLIC OR PRIVATE, AND IMPORTANT TO ME.

I HAVE BEEN A LONG TIME SUPPORTER OF PROVIDING FEDERAL INCOME TAX RELIEF FOR LOWER AND MIDDLE INCOME FAMILIES WHO CARRY THE ADDITIONAL BURDEN OF SUPPORTING THE PUBLIC SCHOOLS WHILE SENDING THEIR CHILDREN TO PRIVATE SCHOOLS. BECAUSE OF THIS DOUBLE BURDEN, AN ALTERNATIVE TO PUBLIC EDUCATION SIMPLY IS NOT AVAILABLE TO LOWER INCOME FAMILIES TODAY AND IS NOT AVAILABLE TO MIDDLE INCOME FAMILIES WITHOUT SUBSTANTIAL SACRIFICE. INFLATION IN RECENT YEARS HAS MADE MATTERS WORSE. YET ALTERNATIVES TO PUBLIC EDUCATION CONTRIBUTE TO THE PLURALISM THAT HELP MAKE OUR SCOIETY STRONG. ALTERNATIVES TO PUBLIC EDUCATION CAN ALSO HELP STIMULATE IMPROVEMENTS IN OUR PUBLIC SCHOOLS THROUGH THE COMPETITION THOSE ALTERNATIVES PRESENT. A STRONG SYSTEM OF PRIVATE SCHOOLS, AVAILABLE TO ALL INCOME CLASSES, SHOULD CONTRIBUTE TO A BETTER EDUCATION FOR ALL OF OUR CHILDREN. AND AN EDUCATED, SKILLED POPULACE IS AN ESSENTIAL INGREDIENT IN MAINTAINING AND IMRPOVING THIS NATION'S TECHNOLOGICAL AND INDUSTRIAL PROMINENCE.

PRESIDENT REAGAN MADE A CAMPAIGN PROMISE TO PROVIDE RELIEF TO THESE FAMILIES WHO CARRY A DOUBLE BURDEN BY PROVIDING A TAX CREDIT FOR A PORTION OF THE TUITION THEY PAY FOR THEIR CHILDREN'S EDUCATION. TODAY, I AM PLEASED TO ASSIST THE PRESIDENT IN TAKING THE SECOND STEP DOWN THE PATH OF FULFILLING THAT PROMISE BY HOLDING THIS HEARING.

FOR THOSE WHO MAINTAIN THAT WE ARE NOT SERIOUS ABOUT THIS LEGISLATION, I NOTE THAT THIS BILL WAS INTRODUCED JUST OVER THREE WEEKS AGO AND THAT THIS HEARING WAS ANNOUNCED BARELY A WEEK AFTER THE BILL WAS INTRODUCED. WHILE THAT MAY NOT BE ABSOLUTELY BLINDING SPEED, I THINK IT IS FAIR TO STATE THAT THIS SCHEDULE SHOWS NO ONE IS DRAGGING HIS FEET.

THE IDEA OF PROVIDING TAX CREDITS FOR TUITION, WE MUST REMEMBER, IS A CONTROVERSIAL PROPOSAL. WE MUST BE CERTAIN TO GIVE IT A FAIR AND FULL EXPOSURE TO THE SHARP SCRUTINY OF ITS OPPONENTS AS WELL AS ITS DEFENDERS. THE IDEA ALSO RAISES INTRICATE QUESTIONS REGARDING SCHOOLS THAT DISCRIMINATE ON THE BASIS OF RACE, THE SEPARATION OF CHURCH AND STATE, AND EQUITY. IF THE BILL AS PRESENTLY DRAFTED DOES NOT ADEQUATELY ADDRESS THESE QUESTIONS, WE MUST FIND WAYS TO CHANGE IT. NONE OF THESE PROBLEMS, IF PRESENT IN THE BILL, ARE INSOLUBLE. WE MUST BE CONFIDENT, HOWEVER, THAT THESE SERIOUS QUESTIONS ARE ADDRESSED.

NO CREDITS FOR DISCRIMINATORY SCHOOLS

WHILE I WHOLEHEARTEDLY SUPPORT TUITION TAX CREDITS IN PRINCIPLE, I CANNOT SUPPORT ANY BILL WITHOUT ADEQUATE SAFEGUARDS INSURING THAT TAX CREDITS WOULD NOT BE ALLOWED FOR PAYMENTS TO PRIVATE SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES OR PRACTICES. EARLIER THIS YEAR, THE FINANCE COMMITTEE HAD OCCASION TO REVIEW THE CONTROVERSY SURROUNDING THE GRANTING OF TAX-EXEMPTION TO SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES. IT IS CLEAR FROM THIS EXPERIENCE THAT WE MUST BE CAREFUL IN CONSIDERING ANY NEW TAX PROVISION THAT MIGHT PROVIDE EVEN INDIRECT ASSISTANCE FOR RACIALLY DISCRIMINATORY PRIVATE SCHOOLS. THIS BILL CONTAINS SEVERAL PROVISIONS INTENDED TO DISALLOW TAX CREDITS FOR TUITION PAYMENTS TO RACIALLY DISCRIMINATORY SCHOOLS. THE FINANCE COMMITTEE, TODAY AND IN FURTHER CONSIDERATION OF THIS BILL, MUST CAREFULLY REVIEW THESE PROVISIONS TO ENSURE THAT THE ALLOWANCE OF TUITION TAX CREDITS WILL NOT IN ANY WAY FRUSTRATE OUR FUNDAMENTAL NATIONAL POLICY AGAINST RACIAL DISCRIMINATION IN EDUCATION.

The bill has a three-pronged approach to this problem. In the first place, a school cannot qualify to receive tax-creditable tuition payments under this bill unless it is a tax-exempt educational institution under code section 501(c)(3). The Supreme Court soon will be considering the nondiscrimination standards that must be met in order to enjoy federal tax exemption.

A school's failure to satsify those standards will automatically disqaulify it from receiving tax-creditable tuition payments. This bill, of course, would not affect the question of what nondiscrimination standards are applicable, under sections 501(c)(3) and 170 of the Internal Revenue Code, to tax-exempt private schools generally. That decision remains with the court.

This bill goes farther, however, and adds two additional provisions designed to disallow tax credits for tuition payments to discriminatory private schools. At the end of a calendar year for which tutiion tax credits may be claimed, the school would be required to submit to the IRS a statement, subject to penalties for perjury, certifying that the school has not followed a racially discriminatory policy during the calendar year.

In addition, if the Attorney General received a complaint that the school had discriminated against an individual, the Attorney General would be authorized to bring a declaratory judgment proceeding in district court to establish that a school, in fact, maintained a racially discriminatory policy. If the Attorney General prevailed in such a suit, credits would be disallowed for tuition payments to the school for 3 years.

The provisions appear tough, and rightfully so. Today's hearing and future consideration of this bill will allow us to analyze the nondiscrimination standards and procedures set forth in this bill with the able assistance and counsel of experts and interested laymen in the fields of education, civil rights, and law.

Constitutionality

In addition to the discrimination problem, many opponents claim that, because of the religious affiliation of many private schools, tax relief for tuition payments violates the Establishment Clause of the First Amendment. I do not agree, but it does not necessarily matter what I or any other Senator thinks about the constitutionality of this measure. So long as we are convinced that the provisions do not clearly violate the First Amendment, and the court deciisons in this area are anything but unanimous and clear, it is up to the Supreme Court to decide the constitutionality of this provision, not us.

Fiscal Restraint

Other opponents of tuition tax credits point to the burgeoning deficits and the painful process that Congress faces over the next year or two in learning what "fiscal restraint" means as reasons not to move forward. Our effort on the Finance Committee in making the tough decisions on Medicare, Medicaid, welfare, and on the revenue side that are incorporated in our recently reported bill speaks volumes about how difficult though necessary this task is.

In light of these challenges, immediate action on any new or expanded tax expenditure with significant revenue impact may not be possible. The Administration has recognized these restraints and is to be commended for scaling back, especially in the early years, the fiscal impact of the proposed tuition tax credit. With the 5-year phase in, the lack of a refundability provision, the lack of credits for college-level education, and the high-income phase out, the fiscal 1983 cost of this bill is estimated by

TREASURY AT APPROXIMATELY $100 MILLION, AND FOR FISCAL 1984, APPROXIMATELY $600 MILLION. THE JOINT COMMITTEE ON TAXATION, I AM PLEASED TO NOTE, ESTIMATES AN EVEN LOWER REVENUE IMPACT: $32 MILLION IN FISCAL 1983, $373 MILLION IN 1984, AND $854 MILLION IN 1985. WITH THE PASSAGE OF THE FINANCE COMMITTEE "TAX EQUITY AND FISCAL RESPONSIBILITY" BILL AND AN IMPROVING ECONOMY, I AM CONFIDENT THAT WE CAN MAKE PROGRESS ON MODEST VERSIONS OF IDEAS SUCH AS THIS SOONER THAN WE ANTICIPATED SOME MONTHS AGO.

NO BENEFIT FOR THE WEALTHY

I AM PARTICULARLY PLEASED THAT THIS BILL DOES NOT PROVIDE BENEFITS FOR WEALTHY FAMILIES. IN THE BILL, THE CREDIT IS PHASED OUT FOR FAMILIES WITH INCOMES BETWEEN $50,000 AND $75,000, AND ELIMINATED FOR THOSE WITH INCOMES OVER $75,000. THIS SIMPLE EXPEDIENT SHOULD SILENCE THOSE CRITICS WHO CLAIM THIS BILL IS INTENDED TO BENEFIT THE ELITE AND THE WELL-TO-DO. IT WILL NOT; ITS BENEFITS LIMITED TO THE LOWER AND MIDDLE CLASSES, AS THEY SHOULD BE. ARE

IN SHORT, TUITION TAX CREDITS FOR LOW AND MODERATE INCOME FAMILIES IS AN IDEA WHOSE TIME HAS COME. I WILL NOT DENY THAT THE PROPOSAL PRESENTS SOME THORNY ISSUES, BUT, AS I HAVE SAID, I DO NOT THINK ANY ARE INCAPABLE OF SOLUTION. I WELCOME CONSTRUCTIVE SUGGESTIONS FOR IMPROVEMENT AND HOPE WE CAN MEET ANY RESPONSIBLE CRITICISMS. I AM CONFIDENT OF THE ULTIMATE AND TIMELY SUCCESS OF THIS MEASURE.

Statement of Senator Daniel Patrick Moynihan (D., NY)

Today we begin hearings on S. 2673, the Administration's tuition tax credit bill, introduced by my colleague, the distinguished Chairman of this Committee. It will be recalled, that Senator Packwood and I held two days of hearings in June of last year, on a tuition tax credit measure, S. 550, which we introduced in the opening months of the 97th Congress.

I have long favored enactment of tuition tax credit legislation. I believe that providing such assistance to those parents who wish to send their children to nonpublic schools is a worthy goal, and one which is consistent with this nation's commitment to diversity and pluralism in education.

I commend the President for carrying through on his campaign promise. I would be less than candid, however, if I did not express some concern about the prospects for enacting this measure in the few months remaining before the adjournment of the 97th Congress.

In June of last year, during this Committee's consideration of legislation implementing the President's three-year tax plan, I offered S. 550 in a modified form, limited to the elementary and secondary levels, as an amendment to that bill. The Administration officials present that day expressed opposition to adding tuition tax credits to that measure, and it was defeated by a vote of 10 to 4. Just two weeks ago, on July 2, when this Committee was marking up another tax bill, Treasury Department representatives were asked whether the Administration would support the addition of tuition tax credits to that bill. The response the Committee received was that the best way to proceed would be for the Committee to hold an additional hearing on this subject.

In my view, it is unfortunate that the Administration has found it necessary to wait 18 months before sending us a bill. This being the case, however, I pledge to do all I can to help see that tuition tax credit legislation is enacted before the end of the 97th Congress.

With respect to the particular provisions in S. 2637, I have several comments. First, the bill contains several provisions designed to assure that no benefits accrue to schools that discriminate on the basis of race. However, I must indicate that the Administration's January 8th attempt to reverse a decade-long policy of barring racial discrimination in these schools has given many of us grounds for concern. This is an absolute requirement and I would welcome assurances from the Administration that such a condition is met by the provisions of the bill.

Second, the bill does not contain a refundability provision. The impact of the bill would be that low-income families, those with no tax liability, or a liability less than the amount of whatever credit they might receive will be unable to benefit from the availability of tuition tax credits. I feel the bill should be amended to make such tax credits refundable. Such a change would, in my opinion, improve this proposal and enhance its chances for enactment.

Finally, I believe that it may be desirable to include in the bill a procedure whereby constitutional challenges to tuition tax credits could receive expedited treatment in the courts. This would help to avoid a period of uncertainty for parents who wish to claim a tuition tax credit.

In conclusion, I remain firmly committed to the concept of tuition tax credits. Our nation has prided itself on allowing its citizens free choice. Tuition tax credit legislation helps guarantee that parents making such choices with respect to their children's education will be able to do so based on the educational alternatives available to them rather than based on financial considerations alone.

The CHAIRMAN. While we are waiting for Senator Long or Senator Moynihan, I think Senator Roth would like to make a brief statement.

Senator Packwood, do you have a statement?

Senator PACKWOOD. Just that I am happy to be marching up this hill again, Mr. Chairman.

The CHAIRMAN. Senator Roth?

Senator ROTH. Mr. Chairman, I wish to commend you for the expeditious manner in which you have scheduled today's hearing on the Educational Opportunity and Equity Act of 1982.

I am an original cosponsor of this legislation as well as S. 550 which would provide a refundable tax credit for tuition paid to secondary and higher educational institutions.

As you know, Mr. Chairman, I have been a champion of the concept of tuition tax credits since 1976 when I introduced the first tuition tax credit legislation in the Congress.

My original proposal would have provided a credit for tuition paid to colleges and universities. The legislation before the committee today is clearly a step in the right direction and in that sense carries out the intent of my original legislation.

However, although I strongly endorse the Educational Opportunity and Equity Act, I am disappointed that the bill does not provide for a college tuition tax credit. I realize the bill limits tuition tax relief to secondary schools due to budgetary considerations. Nevertheless, I am hopeful that college tuition expenses will ultimately be entitled to the credit.

It is in the area of college tuition expenses that we have seen the most dramatic escalation in costs in recent years.

The cost of sending one's children to college today has reached a point where it is unthinkable for many middle-income families. This is particularly true in the case of nonpublic universities. Although, quite frankly, many public colleges are also pricing themselves out of the middle-class market.

Therefore, I would hope that something can be done to provide relief from higher and higher college tuition costs. In my judgment, the tuition tax credit is the most efficient and direct approach to providing this much-needed relief.

We must preserve the freedom of choice in educational opportunities for the vast majority of the American people. It is, I believe, an American birthright.

The second aspect of S. 2673 which I feel should be modified concerns the lack of a provision for a refundable credit.

As it now stands, the credit is not refundable and, therefore, only those who pay taxes will receive any benefit from the legislation. This places poor and low-income families at a disadvantage.

I realize again that the credit was made nonrefundable in S. 2673 because of budget considerations. However, I firmly believe we must provide tuition tax relief not only to middle-income families who pay taxes but to those less fortunate as well.

As I said, S. 2673 is definitely a step in the right direction.

But I believe much more needs to be done to broaden the spectrum of educational opportunity for working Americans. I am therefore hopeful that as the bill before us moves through the legislation process some finely turned modification will be adopted.

Let me say in closing that any tuition credit legislation the committee adopts must be absolutely nondiscriminatory in its treatment of all taxpayers. Schools which practice racial discrimination must not be eligible institutions for the credit.

Thank you, Mr. Chairman.

Mr. Secretary, I would like to congratulate this administration for taking the position it has with tuition tax credits. It is a matter that has been of interest to me since 1975 when I introduced a proposal for a tuition tax credit for college expenses.

My principal reason for being supportive of this approach is, I think it's about time that we recognize the bias that has resulted in recent years where it has become extraordinarily difficult for the blue-collar worker and others to send their children to parochial or private schools. The cost of taxation plus the cost of sending your child to a school of your choice has been beyond the reach of many working Americans.

I think if we had had the same kind of support from past administrations as we have from President Reagan and his administration, this concept would already be enacted.

I might say I would hope, as we proceed with this proposal, that we can improve upon it. I would like to have the legislation cover college as well as elementary and secondary, but I do congratulate the administration for the leadership it is showing in this area.

The **CHAIRMAN**. I am advised that some of my Democratic colleagues will be here a little later, so I won't hold up the Secretary.

I am pleased to welcome Secretary Regan and Secretary Bell. I think Senator Hollings will be here later to make a statement. And I welcome other interested Members and witnesses to testify on S. 2673, the tuition tax credit bill. It is a very important piece of legislation, important to the administration, important to parents of all children in schools, public or private, and important to me. And at this point I would ask that my statement be made a part of the record. I have raised a number of questions, including the cost, the question concerning discrimination, that I think we must address very carefully.

This would be the first in a series of hearings on this very important proposal. I particularly commend my colleagues Senator Packwood and Senator Moynihan for their leadership in this area, along with Senator Roth, and we are now prepared to hear the Treasury Secretary, Secretary Regan.

STATEMENT OF HON. DONALD T. REGAN, SECRETARY OF THE TREASURY

Secretary **REGAN**. Thank you, Mr. Chairman and members of the committee.

I am pleased to appear before you this morning in support of S. 2673, which would provide an income tax credit for 50 percent of certain elementary and secondary school tuition expenses. The tax credit is intended to enhance the equality of educational opportunity for all Americans at the elementary and secondary schools of their choice.

S. 2673 addresses an extremely important area of public policy. The President has taken considerable personal interest in its development. The administration believes that the enactment of tuition tax credit legislation during this session of the Congress is essential to maintain the excellence of the American educational system and to protect the right of American parents to determine how and where their children will be educated.

S. 2673 would establish a tuition tax credit system that would fulfill this administration's commitment to parental responsibility, educational excellence, and fiscal and administrative restraint. The bill will further the educational diversity that is the hallmark of our educational system. It will make educational freedom of choice a reality to more American families. It will target assistance on those families that need it most. Finally, it will neither interfere with the operation of private schools nor impose costly administrative and regulatory burdens on them.

Equality of educational opportunity clearly requires that a diverse range of schools—public and private—be available to all American families, and that all American families have the financial ability to permit meaningful freedom of choice among schools. We believe that parents have a fundamental right and responsibility to direct the education of their children in a way which best serves their individual needs and aspirations. Moreover, we believe that parental involvement in the decisionmaking process enhances the quality of education provided.

Private schools are essential to fulfilling our national educational needs. They provide a healthy diversity of approach, and are often a significant source of innovation and experimentation. But private schools are expensive, and inflation is making them more so. At the same time, higher taxes are making it more difficult for families to afford private education. Tuition tax credits offer a simple means to assist these students by permitting families to spend the money that they have earned for the education that they themselves select.

Tax credits are especially appropriate as a method of assisting parents to educate their children at private elementary and secondary schools. In this area, unlike others we have discussed with this Committee in the past, tax credits will not duplicate existing tax benefits. Tax credits for tuition expenses have the additional advantage of providing the same dollar benefit to all taxpayers. In contrast, a deduction would provide a greater benefit to individuals in higher tax brackets.

S. 2673 would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year.

The amount of the allowable credit is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is $100 for 1983, $300 for 1984, and $500 for the years thereafter. This ceiling limits the relative benefits that the credit will provide to parents whose children attend more expensive private schools.

The second limit contained in the proposal directs the benefit of tuition tax credits to less wealthy families by a phase-out of the credit for higher-income families. The maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over $50,000 and is phased out entirely for taxpayers with adjusted gross incomes of $75,000 or over.

S. 2673 contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. A racially discriminatory policy is a policy under which the school refuses, on account of race, to admit applicants as students; to admit students to the rights, privileges, programs, and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic, or other programs.

A tax credit cannot be claimed unless the school is a tax-exempt organization. As you are aware, the administration strongly opposes granting tax-exempt status to schools that discriminate on the basis of race. Litigation now before the Supreme Court will determine whether continued IRS enforcement of this nondiscrimination policy will require explicit legislation. If legislation is found to be necessary, the administration has already made it clear that it favors a statutory solution.

This committee has expressed its concern that aid not be provided to discriminatory schools. I believe this bill contains provisions that will prevent the use of tuition tax credits to pay expenses at racially discriminatory schools without interfering in the operation of private schools and without subjecting private schools to costly administrative burdens.

Finally, S. 2673 will assist American families to educate their children at the schools of their choice without significant fiscal impact. Our revenue estimates indicate that the cost of the tuition tax credit program is less than $50 million in fiscal year 1983, $400 million in fiscal year 1984, and $900 million in fiscal year 1985.

S. 2673 is a bill that provides substantive tax relief to the families of nonpublic school students, thereby broadening and enriching educational opportunity and promoting excellence in our schools. The bill recognizes the value of our private schools and will strengthen the right of parents to decide the education of their children.

The administration strongly supports S. 2673.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Donald F. Regan follows:]

For Release Upon Delivery
Expected at 9:30 a.m., E.D.T.
July 16, 1982

STATEMENT OF
THE HONORABLE DONALD T. REGAN
SECRETARY OF THE TREASURY
BEFORE
THE SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Committee:

I am pleased to appear before you this morning in support of S. 2673, which would provide an income tax credit for 50 percent of certain elementary and secondary school tuition expenses. The tax credit is intended to enhance equality and diversity of educational opportunity for all Americans at the elementary and secondary schools of their choice.

S. 2673 addresses an extremely important area of public policy. The President has taken considerable personal interest in its development. The Administration believes that enactment of tuition tax credit legislation during this session of the Congress is essential to maintain the excellence of the American educational system and to protect the right of American parents to determine how and where their children will be educated.

S. 2673 would establish a tuition tax credit system that will fulfill this Administration's commitment to parental responsibility, educational excellence, and fiscal and administrative restraint. The bill will further the educational diversity that is the hallmark of our educational system. It will make educational freedom of choice a reality to more American families. It will target assistance on those families that need it most. Finally, it will neither interfere with the operation of private schools nor impose costly administrative and regulatory burdens on them.

Equality of educational opportunity clearly requires that a diverse range of schools -- public and private -- be available to all American families, and that all American families have the financial ability to permit meaningful freedom of choice among schools. We believe that parents have a fundamental right, and responsibility, to direct the education of their children in a way which best serves their individual needs and aspirations. Moreover, we believe that parental involvement in the decision-making process enhances the quality of education provided.

Private schools are essential to fulfilling our national educational needs. They provide a healthy diversity of approach, and are often a significant source of innovation and experimentation. But private schools are expensive, and inflation is making them more so. At the same time, higher taxes caused by bracket creep have made it more difficult for families to afford private education. Tuition tax credits offer a simple means to expand the opportunities of these private school students by permitting families to spend the money that they have earned for the education they themselves select. It also guarantees the continued independence of private schools, since no Federal department will be involved in a funding capacity.

In this area, unlike others we have discussed with this Committee in the past, tax credits will not duplicate existing tax benefits. Indeed, this proposal deals for the first time with the double burden placed upon parents who pay taxes to support others' children in public schools but who also pay full tuition for their own children in private schools. Sending their children to the public schools instead would increase the burden on the public schools and further strain scarce financial resources for public education. It is only fair that the burden on parents now suffering this double expense be relieved. This will also avert the possibility that they might be forced through economic circumstance to return their children to the public schools, which would have trouble accommodating them.

Tax credits for tuition expenses have the additional advantage of providing the same dollar benefit to all taxpayers. In contrast, a deduction would provide a greater benefit for individuals in higher tax brackets.

S. 2673 would allow an individual taxpayer to take a credit against income tax in an amount up to 50 percent of the qualifying tuition expenses paid by the taxpayer in a taxable year. Qualifying tuition expenses are expenses paid for tuition and fees to send certain dependents under the age of 20 full-time to private elementary or secondary schools. Qualifying tuition expenses do not include amounts paid for books, supplies, equipment, meals, lodging, transportation, or personal expenses, or for education below the first-grade level or above the twelfth-grade level.

The credit is allowed only for expenses paid with respect to students for whom the taxpayer is allowed a dependency exemption and who bear any of the following relationships to the taxpayer: children and descendants; stepchildren; siblings, stepbrothers and stepsisters; nieces and nephews; and members of the taxpayer's household, other than the taxpayer's spouse, whose principal place of abode is the taxpayer's home. To be allowed a dependency exemption, the taxpayer must provide more than half of the student's support for the calendar year in which the taxpayer's year begins, and except for the taxpayer's children and stepchildren, the student must have less gross income than the amount of the exemption.

The amount of the credit that is allowable for the taxable year with respect to a student is subject to two limits. First, the maximum amount of credit that may be claimed by the taxpayer for each student in any taxable year is $100 for the taxpayer's first taxable year beginning on or after January 1, 1983, $300 for the first taxable year beginning on or after January 1, 1984, and $500 for taxable years beginning on or after January 1, 1985. This ceiling limits the relative benefit that the credit will provide to parents whose children attend more expensive private schools. Beginning in 1985, parents who send their children to private schools with tuition of $1,000 or less per year will receive a credit for a full 50 percent of tuition expenses. Parents who send their children to more expensive schools will not be able to claim a credit for additional tuition expenses.

The second limit contained in S. 2673 directs the benefit of tuition tax credits to less wealthy families by a phase-out of the credit for higher-income families. The maximum amount of credit per student is reduced as the taxpayer's adjusted gross income increases over $50,000 and is phased out entirely for taxpayers with adjusted gross incomes of $75,000 or over. For the first taxable year beginning on or after January 1, 1983, the $100 per student maximum credit is reduced by .4 percent of the taxpayer's adjusted gross income over $50,000; for the first taxable year beginning after January 1, 1984, the $300 per student maximum credit is reduced by 1.2 percent of the taxpayer's adjusted gross income over $50,000; and for taxable years beginning on or after January 1, 1985, the $500 per student maximum credit is reduced by 2.0 percent of the taxpayer's adjusted gross income over $50,000.

The amount of tuition expense for which a taxpayer is allowed a credit does not include expenses that are paid by scholarships and other educational aid that are not includible in the taxpayer's or in the student's income. If the scholarship is paid directly to the school and the school sends a tuition bill to the taxpayer that is net of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense altogether.

A school with respect to which credits are allowable must provide a full-time elementary or secondary school program and must be a private, not-for-profit, day or residential school.

In addition, the school must be exempt from taxation under section 501(a) as an organization described in section 501(c)(3). Church-operated schools will, pursuant to section 508(c), continue to be exempt from the provisions of section 508(a) and (b), which provide that a new organization will be treated as a private foundation unless it applies for 501(c)(3) status. The fact that credits are claimed for payments to a church-operated school shall not serve as a basis for imposing any new requirements on such schools in this regard.

S. 2673 contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. A racially discriminatory policy is a policy under which a school refuses, on account of race, to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic or other programs. A racially discriminatory policy does not include the failure by a school to pursue or achieve any racial quota, proportion, or representation among its students.

Three anti-discrimination enforcement mechanisms have been written into the bill.

First, a tax credit cannot be claimed unless the school is a tax-exempt organization under section 501(c)(3). As you are aware, the Administration strongly opposes granting tax exempt status to schools that discriminate on the basis of race. Litigation now before the Supreme Court will determine whether continued IRS enforcement of this nondiscrimination policy will require explicit legislation. If legislation is found to be necessary, the Administration has already made it clear that it favors a statutory solution.

Second, in order for tuition expenses to be eligible for the credit, the school must annually file with the Secretary a statement under the penalties of perjury that it has not followed a racially discriminatory policy during that calendar year.

Finally, the Attorney General of the United States, upon petition by an individual who claims to have been discriminated against by a school under a racially discriminatory policy, may seek a declaratory judgment in a United States district court in the district in which the school is located that the school follows a racially discriminatory policy. If a final judgment is entered that the school follows a racially discriminatory policy and pursuant to that policy discriminated against the person filing the petition, tuition tax credits are disallowed for the year in which the complaint is filed by the Attorney General and the two succeeding calendar years. The disallowance takes effect when all parties have exhausted their rights to appeal the declaratory judgment.

This Committee has expressed its concern that aid not be provided to discriminatory schools. The triple enforcement mechanism that I have described will prevent use of tuition tax credits to pay expenses at racially discriminatory schools without interfering in the operation of private schools and without subjecting private schools to costly administrative burdens.

Finally, S. 2673 will assist American families to educate their children at the schools of their choice without significant fiscal impact. Our revenue estimates indicate that the cost of the tuition tax credit program is less than 50 million dollars in fiscal year 1983; $400 million in fiscal year in 1984; $900 million in fiscal year 1985; and $1.3 billion in fiscal years 1986 and 1987.

S. 2673 is a bill that provides substantive tax relief to the families of nonpublic school students, thereby broadening and enriching educational opportunities, and promoting excellence in our schools. The bill recognizes the value of our private schools and will strengthen the right of parents to decide the education of their children. The Administration strongly supports S. 2673.

The **Chairman**. Senator Packwood?

Senator **Packwood**. Mr. Secretary, I cannot tell you how pleased I am to have the administration's support on this. I will be very frank with you, this cannot pass unless the administration does more than support it. It is going to have to push and lobby it as hard as you lobbied the tax program last year for Awax.

Pat Moynihan and Bill Roth and I have been up and down this battlefield for 5 years. In 1978 the House passed a tuition tax credit bill that was primary, secondary, and college. In the Senate we could not win the primary and secondary credits. We fought it, and we fought it, it was filibustered, and we finally went to conference with the House and came back with two conference reports, one with tuition tax credits for primary and secondary and one without, and we could not win it.

I am willing to go this route again, but the administration has to want it desperately.

With that background, where do you want this bill placed? Do you want it added to the tax bill as it goes through the House—the big tax bill we are working on? Do you want to wait and have it added someplace else? I will go wherever you want, but it cannot go without your push.

Secretary **Regan**. First of all, Senator, let me assure you that the administration does support this bill and will be lobbying for it. The fact that I am here this morning, and the fact that Secretary Bell will follow me here this morning indicate the strong support that the administration is giving to the bill. The President himself has spoken out on this bill, and he has communicated with Members of the Senate regarding it.

I believe that we should keep the tax bill passed by the Senate Finance Committee in its current form, and let tuition tax credits be dealt with at a subsequent date, along with whatever other legislative proposals you, the chairman, and the rest of the committee work out. We will work with you on such proposals.

Senator **Packwood**. Well, that's fine. All I am saying is, if you don't want it in this tax bill—we had a tough enough job passing it, take my word for it—there is no point in our attaching it to something you don't want it attache*BAD MAG TAPE**ERR01*d to. That's my point.

Secretary **Regan**. I agree.

The **Chairman**. Senator Roth?

Senator **Roth**. Mr. Secretary, I think sometimes the public underestimates the seriousness of the President. I have found, when he stakes out a position, he keeps to it pretty tough, and he is a real fighter in gettifg what he wants accomplished.

I agree with what Senator Packwood said as to the need for his active support if anything is going to happen, particularly this year; but I would also like to observe that I think sometimes there are those who underestimate the seriousness of the President's commitment to this approach.

I would like to ask you two or three questions. I am disappointed that your proposal does not cover college tuition tax credits as well, and I would like to ask what is the position of the administration on college tuition tax credits?

Secretary **Regan**. In regard to colleges and universities, the President's message which accompanied this bill when it was sent to the Congress stated that this bill was the first step in the process. Very frankly, Senator, I don't think we can afford to go the whole route at this particular time. We do have huge deficits, and the Congress and the administration are trying their best to control those deficits. However, at some time in the future, when we get the deficits better under control, we would be more than willing to work with you and the rest of the committee to investigate including colleges and universities in the same type of program.

Senator **Roth**. You see, I think some of the same arguments can be made there that are made with respect to elementary and secondary, that the cost of administration, redtape, are much less, and you will be getting a lot more dollars into the hands of those we are trying to help.

Many people—middle class, the poor—are finding it just as difficult to send their children to college as to parochial and private schools. So I think it is extraordinarily important that we proceed in that direction as well.

Do you care to make any comments with respect to refundable credits? I think it is important, too, that the poor and the needy have some of the same opportunities.

Secretary **Regan**. At this particular time, Senator, we do not support refundability. This bill contains a tax credit against income tax for the tuition paid. If you pay no taxes, obviously there is no tax credit. We would like to draw the starting line there, in order to advance the idea of tuition tax credits.

I think if we were to include refundability, we would find it, again, very expensive and very controversial. This proposal is controversial enough without adding other elements to it at this particular time. I would rather do what this bill calls for, then see what our experiences are, and go on from there.

Senator **Roth**. Well, I congratulate the administration for supporting the approach. There are some ways I think the legislation can be strengthened—I think it is critically important that we make certain this not be used for purposes of discrimination—but I look forward to working with you, Mr. Secretary.

Secretary **Regan**. Thank you, Senator.

The Chairman. Senator Moynihan?

Senator **Moynihan**. Thank you, Mr. Chairman.

I would like to thank Secretary Regan for his very forthright, reassuring testimony. I think he will have heard from the four of us who are here that we aren't confident about the prospects of this legislation in this Congress, and we are not altogether assured of the administration's purposes.

Two weeks ago, my colleague and friend Senator Packwood asked your associate Secretary Chapoton ought we not to put this matter on that tax bill that we were passing. Secretary Chapoton, under your instructions, said, "No," he thought we ought to have a hearing.

Now we have had hearings on this subject, and there is not much left to say. You are either for, or you are not. The President says he is for the program but not for the legislation at this point, in effect.

I needn't tell you, sir, that this is a committee, the oldest committee of the Senate. Some of us think it is the most distinguished, and certainly we have the most distinguished chairman. [Laughter.]

Senator MOYNIHAN [continuing]. But our work product is rather confined. We pass one bill a year. [Laughter.]

Senator MOYNIHAN. A very large bill, particularly when the Republicans are in and tax increases are in the air, they pass the largest tax increases in history. You get it. Let's put it down in the Guinness Book of World Records, you know? Such increases have never been passed before. [Laughter.]

Senator MOYNIHAN. But we pass one bill a year, sir. That bill has gone out of this committee, and you say you don't want tuition tax credits added on the floor.

Still, an administration has come forward to support a principle of equity. That is an event in our history. We have been around a long time, and we will be around a long time, and this is an important moment. You are testifying, and the President's statement is a most important statement.

One of the problems that has confounded this subject, however, is the position the Treasury Department took on the tax-exempt status of racially discriminatory schools. Last January Mr. McNamar put out a statement in which he reversed a policy that the Internal Revenue Service has enforced since 1970 of denying tax-exempt status to schools that are discriminatory.

I have a history here, Mr. Secretary. I wrote the President's statement in 1970 that said the IRS would issue these regulations which followed a year later. I was not the only person who touched pen to paper, but basically it was the draft that I prepared.

I was, therefore, all the more surprised to hear the Department of the Treasury a decade later say, "Well, we aren't bound by those propositions. We don't think they could be issued by us unilaterally," and in a particular statement said: "Thus, the IRS is without legislative authority to deny tax-exempt status to otherwise eligible organizations on the grounds that their policies or practices do not conform"—and here I emphasize "to notions of national public policy," as if the question of nondiscrimination was a "notion" of national policy.

Now, you have firmly stated otherwise, and I know your own personal convictions would be otherwise, but can you give us some satisfaction that not only are you going to press for a legislatively-acceptable position in this regard as you say you will but that you really care about it, that you have some fire in your belly about this?

As you know, the U.S. executive branch is in the curious position that the Supreme Court has appointed a previous competent officer to represent the Government in a trial having to do with civil rights.

This is the first administration since President Eisenhower who won't take that position itself in court. Not you, sir, but the Department of Justice will not go into the Supreme Court and say, "We do not believe a school should discriminate." And the Court has said, "All right, we'll find a lawyer to say what * * *" effectively, the Department obviously should say. They found a very distinguished lawyer, Secretary Coleman, who was in the Cabinet of President Ford.

This cloud is going to cover this whole issue until you clear it up. We are going to hear from our distinguished friend from South Carolina, and that is what he will mostly be speaking about. Am I wrong, sir?

[No response.]

Senator MOYNIHAN. I am correct.

That didn't have to happen, sir. I wonder if you can help us on this? Because we will never get this legislation passed while it is thought to be a vehicle for discriminatory schools, you know that.

Secretary REGAN. Let me reassure you, Senator, that this administration does not believe in discrimination. If the administration had any thought that this bill would in any way promote discrimination, we would not back it.

We think there are at least three safe guards in the bill that will prevent discrimination. First of all, the school must be a tax-exempt organization, and to be a tax-exempt organization, it cannot discriminate.

Senator MOYNIHAN. Well, no, sir. I'm afraid——

Secretary REGAN. We now have a case before the Supreme Court that will decide this. In the meantime the IRS cannot grant tax-exempt status to a school that practices discrimination.

The school will also file with us, annually, under penalty of perjury, a statement to the effect that it is not discriminating.

Finally, all of this material will be made available to the parents of the children attending the school, and they can communicate with us in order to state that the school is discriminating. The Attorney General will investigate such complaints in accordance with a very complicated procedure continued in the bill.

The bill contains strong safeguards to prevent a tuition tax credit in the case of a school that discriminates.

Senator MOYNIHAN. Well, sir, you know I have perfect faith in your predictions in this matter and in your good faith in this matter; but I am afraid you were mugged by the Justice Department when they refused to take the *Bob Jones* case and the two Carolina cases and really have embarrassed the whole executive branch of the Government to the point where the Supreme Court has had to appoint a lawyer to defend constitutional rights because the Justice Department won't. But that is nothing you could do anything about.

I thank you for your very forthright statement.

The CHAIRMAN. Senator Bradley?

Senator BRADLEY. Thank you, Mr. Chairman.

Mr. Secretary, I would like to follow up on to some of the points that Senator Moynihan mentioned.

You said that there were three safeguards on the antidiscrimination nature of the bill. You said the school must file a statement that it is not discriminating, at the risk of perjury. Could you go into that at greater length? Who does it file with, and who would prosecute the perjurious statement? And who is checking to see if statements made are perjurious?

Secretary REGAN. The school will file the statement annually with the IRS. This will be followed up, but we have not yet established administrative procedures. However, at that point, we would probably have some type of random check of the statement.

Senator BRADLEY. How many people in the IRS will be working on this question to determine whether statements are perjurious or not?

Secretary REGAN. At the present moment I cannot answer that. We have not yet assigned anyone to it. We have not yet established administrative procedures.

Senator BRADLEY. Do you think it will make a difference if one person works on it versus a hundred people working on it?

Secretary REGAN. Definitely.

Senator BRADLEY. What would be your recommendation?

Secretary REGAN. My recommendation would be to put as many people as we can on it, particularly initially, to make certain of the quality of the reports we are getting. As far as the individual statements of the schools are concerned, we will be examining each of those very carefully.

Senator BRADLEY. Who will be examining them, the Treasury?

Secretary REGAN. The Internal Revenue Service, under the Treasury.

Senator BRADLEY. So, if you have a school that has been established for segregationist reasons, the Department of the Treasury and the IRS will depend upon the parents or the participants in that school to inform the IRS that indeed the statement that has been made by all of them together is perjurous. Is that what you are saying?

Secretary REGAN. In addition, Senator, we would receive information from those who might not be admitted to the school or those who know of the school and believe that its practices are discriminatory

Senator BRADLEY. So anybody off the street can write to the IRS and say, "I think school *x* is discriminating"?

Secretary REGAN. Yes.

Senator BRADLEY. Do they have a legal cause at that point?

Secretary REGAN. This probably would then be investigated by the IRS. Of course, you understand that a purely discriminatory school would not have an IRS exemption.

Senator BRADLEY. Well, we don't know that, do we, based upon what the administration's position has been prior to this?

Secretary REGAN. In the hypothetical case that you set up, you said it was a discriminatory school. If, it is discriminatory, per se, it would not have an exemption.

Senator BRADLEY. Could you go through that procedure for us? School *x* sends in its statement saying it is not discriminating. I don't think there will be many schools who will send in a statement that they are discriminating. So you have how many thousands of schools that send in these statements saying they are not discriminating; what happens then?

Secretary REGAN. These forms will be examined by the Internal Revenue Service which will determine whether the statements made by the schools contain grounds for comment by us or investigation by the Justice Department.

Senator BRADLEY. But how do you tell, when someone sends in a statement "I am not discriminating," how do you tell whether he is or he isn't? How do you tell whether it is perjurous? That is the question.

Secretary **Regan**. As the bill is now written, we rely on individuals, who have not been admitted to the school or who have been admitted to the school who believe that the school is discrimenating to bring discrimination to our attention. We will not have IRS examiners walking into each parochial school in the city of Chicago.

Senator **Bradley**. Well, I think that you have sufficiently clouded that water, as Senator Moynihan has pointed out, to raise a very serious question.

Mr. **Chairman**, I would like, after another round, another chance.

The **Chairman**. This is the only chance we have. The Secretary is going to be in an NSC meeting later.

Senator **Bradley**. All right.

Let me ask you, why do you support the cap at the level that it is in the legislation? What is it, $70,000?

Secretary **Regan**. $75,000.

Senator **Bradley**. Why $75,000?

Secretary **Regan**. Well, to be very frank with you, Senator, maybe we could call it the "Lawrenceville" or the "Hunt School" syndrome. Parents who can afford to send their children to those schools, who are earning above $75,000, don't need a tax credit.

Senator **Bradley**. Why not 50,000? Or 40,000?

Secretary **Regan**. The phase out starts at $50,000, and it phases down from $50,000 to $75,000.

Senator **Bradley**. Why not cut it off at 50,000?

Secretary **Regan**. Fifty thousand is about a median income group that we thought would be——

Senator **Bradley**. The "median income group"? What group is median income at $50,000.

Secretary **Regan**. Perhaps "median" is wrong. If we want to quarrel about words, Senator, let's just take the $50,000 as being plucked right out of the air as an average or a type of figure that is appropriate in this particular instance. The parents of close to 60 percent of all schoolchildren in private schools earn less than $25,000. That is 60 percent.

Senator **Bradley**. So the $75,000 isn't going to help them, is it? So it wouldn't make any difference to those parents if it was cut off at $50,000.

Secretary **Regan**. No.

Senator **Bradley**. So what is the rationale for $75,000 instead of $50,000?

Secretary **Regan**. Some figure is needed and it was thought that $75,000 was an appropriate figure. What would the Senator suggest?

Senator **Bradley**. I would suggest a lower figure.

Now, let's look at those people who are earning $10,000 or $20,000 or $25,000. Why didn't you have a refundability provision in this bill?

Secretary **Regan**. We don't think a tuition tax credit is the proper method to distribute funds to those who are needy. There are other provisions and other ways to do that.

Senator **Bradley**. Would you be appreciably moved if it was demonstrated to you that the bulk of the urban users of private schools, parochial schools in particular, have very low incomes and can't utilize this full tax credit without it being refundable? Do you care about that?

Secretary **Regan**. Are they now paying tuition?

Senator **Bradley**. Certainly.

Secretary **Regan**. I understand that in many schools tuition is waived for poor parents.

Senator **Bradley**. But does the Treasury and this administration have no position on trying to assist parents with children and family incomes that do not allow them to take advantage of the full tax credit? Is that correct?

Secretary **Regan**. We are helping them through food stamps and through other social programs. We don't think that tuition tax credits are a proper method for delivering funds to the poor and the needy.

Senator **Bradley**. Well, they are not sufficient unless they are refundable, because you can't take advantage of a tax credit if you don't have the income.

Secretary **Regan**. Senator, this is a tuition tax credit. If you are not paying taxes, I submit that——

Senator **Bradley**. What is the purpose, then, of the tuition tax credit? Let's take the purpose of the tuition tax credit.

Secretary **Regan**. To help taxpayers who are sending their children to private schools somewhat in paying the tuition.

Senator **Bradley**. To help "some" taxpayers. Right?

Secretary **Regan**. Yes. We are not helping all taxpayers.

Senator **Bradley**. In other words, you have to get to a certain income level before you are helped by this legislation.

Secretary **Regan**. By definition you must be a taxpayer.

Senator **Bradley**. So you are saying anyone who falls below a specific income level is not going to be benefited by this legislation?

Secretary **Regan**. That is correct.

Senator **Bradley**. And you are saying you don't care what percent of the parochial schools are below that income level. Is that correct?

Secretary **Regan**. Oh, come on, Senator. I am not saying we don't care about these people. Of course we care.

Senator **Bradley**. Why, then, haven't you made it refundable so that they get some of the benefit?

Secretary **Regan**. For the simple reason that they are not paying taxes, and this is a tuition tax credit.

Senator **Bradley**. To help people above certain incomes.

Secretary **Regan**. To help people who are paying taxes.

Senator **Bradley**. I think the point is made, Mr. Secretary.

Secretary **Regan**. I think I have made my point, Senator. We care very deeply about these.

The **Chairman**. You have just heard from one of the great flatrate tax advocates, Senator Bradley. [Laughter.]

Senator **Moynihan**. Mr. Chairman, could I be allowed just to make one remark?

The **Chairman**. I would like to make one, myself.

Senator **Moynihan**. Please do, both of you. [Laughter.]

I have a "refundable" remark. [Laughter.]

The CHAIRMAN. I wanted to say, first, that if I was assured that I would have the support of the Senator from New York on the tax bill, we might yet find a way to make this bill germane. Is that something that you might be interested in?

Senator MOYNIHAN. Am I to understand that the germaneness rules are that flexible, depending on what the chairman of the Finance Committee thinks is useful?

The CHAIRMAN. Not that. I doubt that it could be made germane, but we could certainly make a diligent search if the Senator from New York is serious about wanting this added to tax bill——

Senator MOYNIHAN. Fine.

The CHAIRMAN [continuing]. And if that would guarantee his support for that important measure. We will check that after the Secretary leaves, unless you want to give us a parliamentary opinion, Mr. Secretary.

[No response.]

Senator MOYNIHAN. Could I make just one remark, Mr. Chairman?

The CHAIRMAN. Sure.

Senator MOYNIHAN. Just to state to Secretary Regan on the question of refundability:

The measure before us takes the form of tax legislation, but it is in fact education that we are dealing with. And the first principle of education in America has been universal availability.

We would like, just as the public schools are open to all regardless of income, it has been the view of those of us who originally proposed this legislation, that the benefits available should be available to all children regardless of income; which is not to say there couldn't be a different view and not to say there aren't budgetary restraints, but I would like to make that distinction. I think you could accept it.

Secretary REGAN. Would the Senator then remove the cap and allow anyone to benefit from this tax credit?

Senator MOYNIHAN. Well, the point is that there does come a time when a family clearly does not need it. It is your view that there comes a time when families don't need this. Surely you admit, from the beginning, there are people with very little or no income who obviously do need it. The question is, do you have access?

Secretary REGAN. If the goal is pure equality, one would have to remove the cap.

Senator MOYNIHAN. It is not an exercise in logic, Mr. Secretary, it is an exercise in social policy.

The CHAIRMAN. I would point out this is our first hearing on this, and we probably will make some changes. We have been known to make changes in administration proposals, in any administration, in this committee.

I guess we will pass more than one bill this year in this committee. We have the Caribbean Basin Initiative, Enterprise Zones, and other matters that have yet to be reported out by this commitee, and we certainly will consider carefully—I am not even certain what the committee's wish might be on this legislation. I haven't made an effort to determine whether it supports the proposal or not, but it is clear that the administration feels strongly about it; that's why we are having the hearing today.

We appreciate your testimony, Mr. Secretary.

Are there other questions?

Senator BRADLEY. Mr. Chairman, I think the points have been made that need to be made, and I didn't intend by my comments to question the commitment of the Secretary but only to question the commitment of the administration as a whole. That is the troublesome aspect of this legislation, and I think that, unfortunately, it will be a determining aspect.

Secretary REGAN. I can tell the Senator that since I am speaking for the administration, I speak for the administration on all aspects of this bill, including the discrimination portion. We will be very vigilant to watch that if, and when this bill is passed.

The CHAIRMAN. And I might say to Senator Bradley that I have a series of questions that I am going to submit to the Secretary and ask for written responses to the record on the question of discrimination, because it is a serious question, one that we must address and will address, and hopefully to everyone's satisfaction.

Senator BRADLEY. Mr. Chairman, may I also submit questions?

The CHAIRMAN. Yes, and anyone else may who has them.

Thank you, Mr. Secretary.

Secretary REGAN. Thank you very much, gentlemen.

[The administrations answers to questions from the committee follow:]

Question. What is the administration's current policy and practice regarding the issuance and revocation of tax-exempt status for private schools not maintaining racially nondiscriminatory policies as to students?

Answer. The IRS is following the injunction in *Wright* v. *Regan*, No. 80-1124 (unpublished order, D.C. Cir., February 18, 1982), that it cannot grant or restore tax exemptions to schools that discriminate. In accordance with Revenue Procedure 75-50, it is requesting information about discrimination in the application for exemption filed by schools.

If a school outside Mississippi that applies for an initial exemption were to fail the standard for racial discrimination in the revenue procedure, the IRS would hold it in suspense until the *Bob Jones* decision provided guidance in this area. Similarly, the IRS would hold a case in suspense where an existing exemption could be revoked on grounds of radical discrimination.

Question. Pending the Supreme Court decision in *Bob Jones* and *Goldboro*, is the IRS granting tax exemption under Seciton 501(c)(3) for new schools applying for tax exemption which discriminate based on race? Similarly, is the IRS now auditing schools which are already exempt to determine if they discriminate based on race? Please give information about the level of enforcement effort in these areas.

Answer. The IRS is now both processing applications for exemption and auditing private elementary and secondary schools. In accordance with the *Wright* injunction, the IRS is neither granting nor restoring tax exemption under section 501(c)(3) for schools which discriminate based on race. Any case outside Mississippi, either on initial application for exemption or on audit, that might fail the standard for a racially nondiscriminatory policy under Revenue Procedure 75-50 would be held in suspense until the *Bob Jones* case is decided. Mississippi schools failing the standard would be processed in accordance with the injunction in *Green* v. *Miller*.

APPLICATIONS FOR TAX EXEMPTION

In January 1982, the IRS suspended all applications for exemption by private schools. That suspense was lifted in June 1982 in order to issue rulings to schools that did not discriminate. Since June 1982, the IRS has issued 130 favorable rulings on applications for exemption by schools in cases which had been suspended since January and in which there was no issue of racial discrimination.

AUDITS

The IRS audited 303 private elementary and secondary schools in fiscal year 1977 and 230 schools in fiscal year 1978. From July 1978 until May 1980, the IRS suspended examinations of private elementary and secondary schools, initially because of the publication of the 1978 and 1979 proposed revenue procedures concerning racial discrimination and subsequently because of the effect of the Dornan and Ashbrook appropriation riders. In May 1980, a limited private school examination program was instituted primarily to audit schools, using standards permitted by the riders, in those situations where there were indications of noncompliance or where complaints were received. In January 1982, a suspense was reinstituted but was partially lifted in July 1982 so that cases of schools that do not discriminate could be closed. As of July 1982, the IRS had a total of 113 audits that had been suspended previously.

As a result of the 1980 court order in the case of *Green* v. *Miller,* the IRS undertook a survey of all tax-exempt private schools located in Mississippi. As a consequence, a number of examinations were conducted resulting in five revocations, all of which are now pending in declaratory judgment actions before the U.S. Tax Court.

Question. For the period between the enactment of this bill and a decision by the Supreme Court in *Bob Jones,* would tax credits be allowable for tuition payments to private schools failing to qualify for exemption because of failure to maintain and publicize a racially nondiscriminatory policy, as required, in Rev. Proc. 75-50?

Answer. After the bill is enacted, there would be two cases in which tuition tax credits would be disallowed because of racial discrimination. One would be a case in which the Attorney General is successful in seeking a declaratory judgment that the school has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition. This action does not depend upon the *Bob Jones* case and could be brought between the date of enactment and a decision by the Supreme Court. Obviously, tuition tax credits would not be allowable where a judgment had been won by the Attorney General.

The ultimate allowance of tuition tax credits for discriminatory schools where there is no declaratory judgment proceeding depends upon the *Bob Jones* decision. If these schools are held to be tax-exempt under the *Bob Jones* decision and legislation denying tax exemptions to such schools is not passed by Congress, tuition tax credits would be allowable in those cases.

There are three situations in which tax credits would be disallowed during the interim before the *Bob Jones* decision:

1. The school applies for its initial exemption and fails to meet the standards of Revenue Procedure 75-50 for racial discrimination. These cases would be held in suspense until a decision were rendered in *Bob Jones.* If a case is held in suspense for more than 270 days, the school could bring a declaratory judgment proceeding in the Tax Court asking the Court to declare it tax-exempt (section 7428). If the Tax Court rendered its opinion before the *Bob Jones* decision, the allowance or disallowance of tuition tax credits would depend upon the Tax Court decision.

2. A school that has already been given its exemption fails to meet the revenue procedures. The possible revocation of the exemption would be held in suspense until the *Bob Jones* decision, but in the interim the school continues to be exempt and credits may be claimed. If the *Bob Jones* decision would cause the school to lose its exemption, presumably the credits could be disallowed retroactively for open years.

3. Unincorporated church schools do not have to apply for exemption; they are automatically tax-exempt as churches. These schools, like the schools in case 2, continue to be exempt and tuition tax credits could be claimed with respect to them. Again, if the *Bob Jones* decision were to render these schools nonexempt, tuition tax credits could be disallowed retroactively for open years.

Question. Assuming that the Supreme Court affirms the *Bob Jones* and *Goldsboro* cases, and decides that federal tax-exemption cannot be granted to private schools maintaining racially discriminatory policies, would the enactment of this bill have any effect on the procedures and standards applicable in determining whether a school qualifies for tax-exemption?

Answer. No. This bill has no effect on the law under section 501(c)(3).

Question. Assuming that this bill is enacted, and that the *Bob Jones* and *Goldsboro* cases are affirmed, would the IRS be required to deny tax-exempt status, and thereby deny tuition tax credits, for a school that fails to maintain a racially nondiscriminatory policy as to students?

Answer. Yes. If the *Bob Jones* case is affirmed and holds that the IRS is required to deny tax exemption to a school that racially discriminates, then the IRS will do so. Under the bill, no tax credits are allowable if a school is not exempt under section 501(c)(3).

Question. S. 2673 vests exclusive enforcement responsibility for certain of the bill's nondiscrimination rules with the Attorney General. Will approval of this bill imply any Congressional view on the issue of whether a private individual has standing to challenge the tax-exempt status of an institution? This issue may be reviewed by the Supreme Court in the *Wright* case.

Answer. We do not believe that the bill has any implications about private rights of action in challenging the tax-exempt status of an institution. The bill does not affect the law under section 501(c)(3). Further, the new proceeding by the Attorney General is not a suit to deny tax exemption, but rather is a suit concerning only the disallowance of tuition tax credits on a ground separate and apart from tax exemption.

The government's position in the *Wright* case is clear and a matter of public record in its brief to the Supreme Court in this most important case. A private individual should not be able to challenge the tax-exempt status of an institution, and this bill contains no implications to the contrary.

Question. Under the bill, if the Attorney General prevails in a declaratory judgment proceeding, credits are disallowed for three years beginning with the calendar year the lawsuit is commenced. If litigation lasts longer than three years, and the school's practices do not change, is it intended that credits would begin to be allowable merely because the three-year period has elapsed? (Question A.) Similarly, if the school continues to maintain a discriminatory policy, will the Attorney General be required to bring a new lawsuit every three years? (Question B.) If so, will the subsequent lawsuit be authorized only upon the receipt of a petition by a victim of discrimination? (Question C.)

Answer. A. Yes. The three-year penalty is imposed for a proven act of discrimination and a proven racially discriminatory policy. For the penalty to extend for an indefinite period of years would discourage the school's use of the judicial process, i.e., its right to appeal. If the school persists in discriminating, it would be relatively easy for a complainant to file another complaint, considering that one has already been filed. The litigation burden will always fall on the Attorney General, not the complainant.

B. Yes. A new lawsuit must be filed in order to prove judicially that the school is still pursuing a racially discriminatory policy.

C. Yes.

8. The bill "authorizes" declaratory judgment proceedings when a petition is filed by an alleged victim of racial discrimination. If the Attorney General determines that the claim has merit, will he be required to bring a lawsuit, or is this enforcement procedure wholly discretionary?

Answer. If the Attorney General finds the requisite "good cause," and he cannot settle the claim, it is intended that he will bring a declaratory judgment proceeding against the school.

The declaratory judgment proceeding and the bill itself are intended to force schools to abandon racially discriminatory policies. If the Attorney General can settle a suit by having a school revise its policy, we believe that that result is as desirable and as effective as a final court judgment.

Question. Will the Attorney General's lawsuit be concerned only with the specific act of discrimination alleged in the petition, or is the petition a triggering device, authorizing the Attorney General and the court to review the school's racial policies in general?

Answer. The Attorney General must seek a declaratory judgment that the school has followed a racially discriminatory policy and that the school has, under that policy, discriminated against the person filing the petition. The petition is a triggering device that authorizes the Attorney General to review the school's racial policies and, upon finding good cause to believe that the school adheres to a racially discriminatory policy, to bring a declaratory judgment action under Section 7408.

Question. When the Attorney General permits the school to comment on allegations of racial discrimination during the period before filing suit, will the individual petitioner also be permitted to participate?

Answer. The individual petitioner will have the first opportunity to provide information to the Attorney General as to the substance of his complaint. During the course of the investigation, the Attorney General could be expected to talk to both the school and the petitioner numerous times, depending on the complexity of the complaint.

Question. Will the Attorney General be permitted to maintain the confidentiality of the individual petitioner?

Answer. No. The Attorney General must promptly give a school written notification of the petition and the allegations against the school. Since the Attorney General would seek a judgment that the school has discriminated against the person filing the petition, the school must know the specific instance of discrimination that is being alleged in order for it to defend itself.

Question. If a school agrees to admit an individual, who petitioned claiming that he was refused admission on acount of race, would the school's correction of the specific act alleged in the petition render the Attorney General's lawsuit moot, or could the Attorney General and the court proceed to review the school's racial policies generally?

Answer. If the Attorney General determines that the school has abandoned its racially discriminatory policy, the suit would be discontinued. However, if he determines that the school intends to maintain its racially discriminatory policy, and the specific act of discrimination was reversed solely for the purpose of avoiding litigation, he would be expected to continute the litigation. Under such circumstances, the elements of a Section 7408(a) claim—that the "educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition"—would be met.

Question. If a school with a racially discriminatory policy under investigation by the Attorney General dropped the policy, would the Attorney General seek any sanction based on the period of time that the school had a racially discriminatory policy in effect?

Answer. The purpose of the declaratory judgment proceeding is to encourage schools to abandon discriminatory policies. In our view, a settlement by the school is as effective in this regard as a declaratory judgment. Accordingly, if a school under investigation by the Attorney General drops its racially discriminatory policy, it is intended that the Attorney General would not seek any sanction based upon the time during which the school discriminated.

Question. How will the IRS collect tuition tax benefits given in prior years to parents with children in a school with a racially discriminatory policy? Would an amount such as provided in section 7428 be provided?

Answer. If tuition tax credits are disallowed because a declaratory judgment against a school has become final, deficiencies with interest would be assessed against parents who claimed tax credits with respect to tuition paid to the school during the three-year period of disallowance. The bill keeps the statute of limitations open with respect to these tuition tax credits, and the Internal Revenue Service may assess a deficiency with respect to them within three years after a judgment declaring a school to be discriminatory becomes final.

The bill does not amend section 7428 to allow a protected amount of credit to be claimed during the three-year period. Upon a final adjudication of discrimination, tax credits for the three-year period would be disallowed in full.

Question. If a school is under investigation by the Attorney General, and makes a slight modification in its racially discriminatory policy, how would it affect action by the Attorney General?

Answer. If the Attorney General determines that the school under investigation continues to adhere to the racially discriminatory policy, it is intended that the investigation, and subsequent litigation, will continue.

Question. The bill requires a school's annual certification regarding its nondiscrimination policy to be made under penalty of perjury. What purpose does this requirement serve, and how will it be enforced?

Answer. Initially, we believe the statements will influence the schools, for pecuniary reasons, to abolish any discriminatory policies they may have previously maintained.

The annual statement is then a threshold test for claiming a tuition tax credit. Schools that cannot attest under the penalties of perjury that they have not discriminated during the calendar year will not qualify for credits.

Returns claiming the credit will be checked at IRS Service Centers for a copy of the statement. If the statement is not attached to the return, the return will be pulled and the credit will be disallowed.

The annual statement will also provide the Attorney General with additional weapons for prosecuting a discriminatory school. If the school has been filing annual statements, the Attorney General might have grounds for bringing a perjury prosecution, even if there has not been a private petition that would allow him to bring a declaratory judgment proceeding. In addition, if there is a final court adjudication of discrimination by the school, the Attorney General may monitor the annual statements filed thereafter to see whether they are perjurious if the school has not changed its practices.

The Secretary of the Treasury can also alert the Justice Department to a statement that it has reason to believe is perjurious.

Question. Will the school's annual statement regarding its nondiscriminatory policy be simply a conclusory statement, or would the Secretary, or the Attorney General, be authorized to require that the sworn statements describe the school's policies or practices in detail?

Answer. It is intended that the annual statements track the language of the statute without further details. The school would declare that it has not followed a racially discriminatory policy during the calendar year and would indicate whether a declaratory judgment proceeding has been brought against it during that calendar year or either of the two preceding calendar years.

Question. Will a school be required under this bill to publicize that it has a racially nondiscriminatory policy?

Answer. The bill does not directly require a school to publicize that it has a nondiscriminatory policy in order for credits to be allowed, although the school will have to file an annual statement with the IRS and parents under the penalties of perjury that it has not followed a discriminatory policy during the calendar year.

Current IRS procedures in granting section 501(c)(3) exemptions to schools require schools to publicize annually that they do not have a discriminatory policy. Since a school must be exempt under section 501(c)(3) for a credit to be allowed, those schools that apply to the IRS for exemption must conform to IRS requirements.

Unincorporated church schools do not have to apply for exemption, so they do not have to publicize their policies as do separately incorporated schools, which must apply for exemption. However, they will still must file the annual statement under this bill.

Question. Under the bill, would religious schools be permitted to limit attendance to adherents of a particular religion? What sorts of religious limitations will be impermissible, if any?

Answer. Yes—so long as the religion does not require adherents to be of a particular race. In other words, a school may not use religion as a cover for discriminating on the basis of race.

Question. If a church school teaches a religious doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

Answer. Yes. If the church school does not follow a racially discriminatory policy as defined in the bill—that is, if the church school does not refuse students on account of race, does not discriminate in its programs, etc. —then the Attorney General has no cause of action against the church school, no matter what it preaches or what its tenets are.

Question. If a secular school teaches a secular doctrine of racial separation, but does not practice segregation or exclusion on racial grounds, would it qualify for creditable tuition payments?

Answer. Yes. See answer to Question 20, which is the same whether the school is a church or secular school.

Question. Will the Justice Department participate in the *Bob Jones University* and *Goddsboro Christian Schools* cases before the Supreme Court? What position will the Justice Department take?

Answer. The United States is a participant as a party to the *Bob Jones* and *Goldsboro* cases and has filed a brief on the merits with the Supreme Court. Briefly stated, the position of the United States in the *Bob Jones* and *Goldsboro* cases is (1) that the IRS is not statutorily authorized to deny tax-exempt status to racially discriminatory private schools under 26 U.S.C. 501(c)(3), but (2) that such statutory authority, if it existed, would not contravene the Religion Clauses of the First Amendment to the United States Constitution.

The CHAIRMAN. Our next witness is Secretary Bell, followed by Senator Hollings.

Secretary Bell, we are pleased to have you before our committee. I believe this may be your first appearance before the Senate Finance Committee, and we are particularly pleased that you are here on this issue. We think we have a good committee, and we look forward to hearing your testimony.

STATEMENT OF HON. TERREL H. BELL, SECRETARY OF EDUCATION

Secretary BELL. Thank you, Mr. Chairman.

The CHAIRMAN. I might say that your entire statement will be made a part of the record. You can proceed in any way you wish. Do you wish to summarize?

Secretary BELL. I think maybe the chairman is suggesting brevity, and I will respond to that cue.

I appeared a year ago before the Subcommittee on Taxation and Debt Management. Senators Moynihan and Packwood were here then, and at that time I expressed our support for the concept of tuition tax credits and indicated that the administration would be back with a proposal.

To avoid redundancy to Secretary Regan's testimony I will give a summary of some of the salient points, emphasizing the education benefits to the tuition tax credit program. And I would like to request, if the chairman approves, that my entire statement appear on the record.

The CHAIRMAN. It will be made a part of the record.

Secretary BELL. Our proposal is an integral part of the President's education program. We have been trying to deregulate our schools, cut out regulations that we think overreach and stretch beyond the point of the law.

We have our block-grant legislation that the Congress passed a year ago, and we have two more block-grant proposals that are in the formative stage now. And, as the members of the committee know, we have our New Federalism proposal, and we have a proposal to establish a foundation for education assistance. All of these are efforts to try to limit departmental authority and governmental reaching into the operations of schools and colleges that we believe have been a bit excessive.

We also have appointed a National Commission on Excellence in Education, and we are trying to wage a campaign to get more vigor and quality into our schools.

The President's proposal on tuition tax credits we think will add another crucial incentive factor, and I sincerely believe it will bring more vitality into American education by strengthening the private side.

The Government provides, as the committee knows, students and their families with financial assistance to make it possible for students with limited financial means to enroll in our private colleges and universities as well as our public colleges and universities. Federal aid for higher education students applies, I should emphasize, to private as well as public institutions. And I feel that the private and public colleges and universities have accepted this and that they work well together. I don't believe that there is undue hostility and animosity in the two areas.

Similarly, we feel that our proposal offers quite a realistic and a nonintrusive means of enabling students on the elementary and secondary level that attend private schools, and the parents of those students, to have that choice. The choice is now available in higher education, and our effort is to try to extend it to parents and students on the elementary and secondary school level.

Our effort, then, is to bring about more variety in choice on the elementary school level, and we want to do that without interference and undue dependence of the private schools on Federal and taxpayer resources.

One of the great strengths, I think, of the private schools has been the fact that many of them have religious affiliations, and in this affiliation it is possible for them to have the independence and the freedom from governmental direction and to operate in an atmosphere where they can practice religious freedom as well as being free from the Government.

Now, many have incorrectly believed that tuition tax credits constitutes governmental assistance to schools and that this would detract from private schools' independence. I am happy to say that this proposal cannot and will not do that. No Federal financial assistance will pass from Federal officials to schools or even to students; as was explained I am sure by Secretary Regan, this is done through the tax system, and so there will not be that element of Federal interference or the intrusion into the privacy of private schools that ought to be there.

I would like to just emphasize as I am summarizing my prepared testimony, Mr. Chairman, that I think we have good reason to be proud of what we offer by way of education in this country. In our 206 year history we have a system and opportunities for learning that is unrivaled by any country. This, in large measure, is the result of the quality and the diversity of educational opportunities that we make available, and a freedom to choose, and for all of us to draw from a broad and diverse system those elements that we want from it.

I emphasize again that our higher-education system has prospered under this diversity and under this competition that we have with both outstanding public and private institutions on the higher-education level. We think that that freedom to choose, that diversity and that opportunity for healthy competition for both public and private elementary and secondary schools, will be enhanced through this legislation.

We believe that the existence of the vitality of the private school sector will even be more strengthened as we make it possible for more choice to be provided. In doing that we can free up some resources to improve programs in public school populations, and we can provide a competitive forum for educational innovations.

The private school tuition barriers to enrollment has been demonstrated, and I might just exerpt a few numbers from my prepared testimony on that.

In 1979, the median private elementary school tuition was $360 a year—$315 for church-related schools and $1,222 for non-church-related schools. And for secondary school tuition the median was $925, with $900 being the median for church-related high schools and going up to $1,400 for non-church-related high schools.

Now, these sums are fairly substantial, and they are especially so for low- and middle-income families. As an example, a family of four children with two in elementary school and two in the secondary school levels in a church-related school offering would have to come up with $2,430 to handle the tuition. And in the non-church-related schools, with this higher level that I have been discussing, that would hit over $5,200. So the tuition tax credit would provide a benefit to low- and middle-income families.

These families, incidentally—I don't know if Secretary Regan emphasized this—constitute the largest users of private schools; even after you consider the financial restraints that I have just mentioned, they constitute our largest group of users of private schools.

I was surprised to learn, in digging into this issue, that 54 percent of the students in private schools come from families with incomes below $25,000. That number surprised me greatly.

Members of minority groups are also participating significantly in the private schools. A recent survey, for instance, of our Catholic schools indicates that 18.6 percent of their enrollment—and they are our largest group of private schools—are from minority families. So this minority participation is a point to emphasize.

If we just consider blacks, for example, the Bureau of Census reports that as of 1979 in the central cities of our metropolitan areas about 16 percent of the private school enrollees were black children, and about 8 percent of the private school enrollees were Hispanic students. I emphasize that to indicate that these schools are open, they are diverse, and they are reaching and serving minority and low-income and not just the wealthy as many often think of this.

This increased diversity in education that can be fostered by this tuition tax credit we think will stimulate a healthy competition between public and private schools, and we think that may tend to promote higher standards in both systems.

I don't think we can minimize the role of competition, particularly in our society. I think the quality goods and services that we have at affordable prices are all related to the fact that we believe in freedom to choose and in diversity of choice.

So, our proposal will bring that about more than it exists at the present time. We think that this will generally tend to improve our schools and bring about better service and more effective learning for all students.

So we would emphasize that private schools offer a healthy alternative, and it's more than just course offering in some ways. Private schools are often smaller than public ones. The average student enrollment, for example, in a public high school nationwide is 758 students, and that is compared to 215 students for private high schools. This size, in and of itself, gives more choice for different types of offerings and more individualized instruction in one area as compared to the other.

I think we need to emphasize as much as we can that it is difficult for any school system to meet all of the needs of its students and to be consistent in responding to the values of parents. There will always be parents that will choose educational values that will differ from other parents and from other families, and this can't be served by a public school system standing alone. The views of parents, where they want other values brought into the instruction, can be served with a strong private school sector.

So we want to do what we can to strengthen and vitalize that aspect.

One other point I would make, Mr. Chairman—and I am almost through here; I know you are pressed for time—some opponents of tuition tax credits have expressed a fear that this legislation will weaken the public schools by attracting more and better private school students. Now, we believe that the public schools, like the public universities that I have talked about, will benefit from the diversity and the wholesome competition that our legislation can bring about, this diversity that brings options that we can offer and will make our learning opportunities richer for our children.

Not contained in my testimony but additional information that I would like to emphasize is that the State of Minnesota initiated a tuition tax credit program in 1971. It started out quite modestly with a credit of $100 and $140; then, in 1975, this was doubled. I have analyzed the public versus the private school enrollment during those years in the State of Minnesota, and we could find no significant difference in the enrollments in one system than another.

I realize that I may be generalizing from one instance, but at least the experience over some years in the State of Minnesota ought to be encouraging to us and ought to be encouraging to our public school colleagues who are worrying that we are going to draw vast numbers of students away from the public school sector.

I believe that constitutes a quick summary, Mr. Chairman. There is one other point that I might just make that I haven't made, and that is the fact that these private schools do a lot of public good, that they take a burden off from the taxpayers. Maybe I haven't emphasized that quite enough.

If only one-tenth of the approximately 5 million private school children were moved over onto the tax rolls, the taxpayers would have to come up with another $1 billion in school support. That is based upon our current pupil expenditures. So I think we ought not lose sight of that. It isn't the prime purpose of this legislation, it is to provide tax equity and the diversity of choice that we talk about; but I think we should emphasize that also.

I appreciate this opportunity to appear before you and would be happy to respond to questions.

[The prepared statement of Secretary Bell follows:]

TESTIMONY OF HONORABLE T. H. BELL, SECRETARY OF THE DEPARTMENT OF EDUCATION BEFORE THE SENATE COMMITTEE ON FINANCE

July 16, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before you this morning to present the views of the Education Department on S. 2673, "The Educational Opportunity and Equity Act of 1982."

A year ago I appeared before your Subcommittee on taxation and debt management to present the Reagan Administration's hearty endorsement of the concept of tuition tax credits. Today, I am pleased to discuss the President's fulfillment of his commitment to this concept in the form of S. 2673, which the President sees as an important expansion of educational opportunities for all Americans. The President is anxious to have this measure enacted into law during this session of Congress.

The President's bill would permit individual taxpayers to receive a credit against their income taxes of 50 percent of the cost of tuition and fees for each child in eligible nonpublic elementary and secondary schools up to a maximum credit per child. The maximum credit would be phased in over a three-year period, rising from $100 in 1983 to $300 in 1984, and ultimately to $500 in 1985.

This legislation is intended to meet the needs of lower- and middle-income working families. These families are ones who need assistance in meeting their growing educational expenses. A full credit would be available only to those families with adjusted gross incomes up to $50,000 and benefits would decline to zero at $75,000 income.

The Administration's tuition tax credit bill contains strong anti-discrimination provisions. Parents would be eligible for the credit only if they send their children to a not-for-profit tax exempt institution which provides a full-time elementary or secondary school program and which does not discriminate on the basis of race, color, or national origin. A school follows a discriminatory policy if it refuses, on account of any of these characteristics, either to admit student applicants or to allow students full participation in the school and its programs.

Our proposal is an integral part of the President's education program. We have our deregulation efforts and our new block grant legislation to amend existing policies that are wrong in concept and approach. We have our "New Federalism" and foundation proposals to limit Departmental authority over the schools. We have our National Commission on Excellence in Education to address the matter of vigor and quality in American schools. And now the President has proposed enlarging educational options for parents through tuition tax credits, a crucial incentive to vitality in American education of which private schools are an integral part.

As you know, the Federal government provides students and their families with financial assistance to enable students to enroll in either public or private colleges and universities. Federal aid for higher education supports students who choose to attend private institutions. Similarly, our proposal offers a realistic and non-intrusive means to enable students to enroll in private elementary and secondary schools.

The Administration's proposal reflects our thoughtful consideration of the best means for bolstering variety and choice in elementary and secondary education without creating the possibility -- or even the appearance -- that any Federal interference with the independence of private schools may occur so long as they do not discriminate on the basis of race. One of the great strengths of the private schools of this country, many of them affiliated with religious institutions, is their independence of governmental direction and concomitant ability to provide an atmosphere compatible with the beliefs and values of the families of those who attend. Many have incorrectly believed that tuition tax credits constitute governmental assistance to such schools and would, thus, eventually detract from their independence. I am happy to say that this proposal cannot and will not do so. No Federal financial assistance will pass from Federal officials to schools or even to students, no choices will be made at the Federal level concerning the content or program of the schools, and all decisions regarding education for which tax credits are granted under this proposal will be made by the families and schools directly involved.

Americans do have good reason to be proud of a public and private educational system unrivaled in the history of civilization. The enormous accomplishments of our people in their 206-year history as a nation are a tribute, in large measure, to the quality and diversity of educational opportunity available to them. Moreover, our higher education system has prospered under the diversity and competition of both public and private institutions. We believe that the freedom to choose, the diversity, and the healthy competition of both public and private elementary and secondary schools will be similarly enhanced through this legislation. The existence and vitality of the private school sector acts to support and strengthen the public schools by relieving the public schools of the burden of educating some children, thereby freeing up resources to improve programs for the public school population, and by providing a competitive forum for educational innovation.

Growing numbers of Americans want greater choice in education, but many middle-income as well as low-income families cannot afford to choose. The cost of education, both public and private, has risen dramatically in recent years. This additional cost has always severely limited the ability of lower-income families to choose the nonpublic educational alternative for their children. Rising costs are now putting private schools beyond the reach of a growing number of middle-income Americans as well.

This private school tuition barrier to enrollment can be readily demonstrated with a few numbers. In 1979, tne median private elementary school tuition was $360 per year--$315 for church-related schools and $1,222 for non-church-related schools. Secondary school tuition was higher with a median of $925 per year--$900 for church-related high schools and $1,400 for non-church-related schools. These sums are substantial, especially for families with many school-age children. For example, a family with four children, two in elementary and two in high school, would have paid $2,430 in church-related schools and $5,244 in non-church-related schools.

A tuition tax credit would provide the greatest benefit to low-and middle-income families. These families constitute the largest users of the private schools even with financial constraints. In 1979, fully 54 percent of the students in private schools came from families with incomes below $25,000: That was 54 percent -- a figure that has surprised me.

Members of minority groups would also benefit significantly. A recent survey, for instance, showed that 18.6 percent of the students in Catholic schools--the nation's largest private school sector--were minority group members. The minority group percentage is even higher in private schools in many cities. Considering just blacks, the Bureau of Census reports that in the central cities of metropolitan areas in 1979, 12 percent of private school enrollees were black. The Census Bureau also reports that Hispanic students constituted over 8 percent of the private school enrollment in these central city areas that year.

Increased diversity in education will also be fostered by a tuition tax credit. This diversity stimulates a healthy competition between public and private schools that promotes higher standards in both systems.

The vital role competition has played in our society, in providing quality goods and services at affordable prices, is well known. This economic principle applies in the provision of education as forcefully as it does to any other product or service. If a school has little or no competition, it may lack the incentive to improve its educational quality.

This improvement in quality through competition is of special importance to low income and minority youth. Since these youth face considerable barriers in their quest for upward financial mobility, the better education that competition will produce will be an important step in helping them to secure a job after they leave school.

Private schools do offer alternatives. Private schools are often smaller than public schools. For instance, the average student enrollment in public high schools is 758 students compared to 215 students in private high schools. Because of their size, public schools tend to offer a broader range of courses. However, many parents prefer private schools' smaller size and more individualized attention.

As Secretary of Education, I am aware of the quality education offered in many public schools today. Yet it is difficult for any one school system to meet all the needs of its students or to be consistent with the values of all parents. There will always be many parents whose educational values differ from those of the public school system. The views of such parents should be respected and their freedom to choose should be supported, especially when this choice might increase the achievement of their children.

Some opponents of tuition tax credits have expressed fear that this legislation will weaken public schools by attracting more and better students to the private schools. We believe that the public schools--like the public universities--will benefit from the diversity and wholesome competition. The more diversity and options we can offer, the richer will be our learning opportunities for all children. The public school will grow stronger and more competitive.

S. 2673 is also a significant part of the President's tax program: it would promote greater equity in taxation. We all bear the burden of the costs of public education through State and local taxation, directly or indirectly. But those parents whose children attend nonpublic schools must also bear the additional burden of paying private school tuition. Tax credits will go a long way toward reducing the unfairness inherent in this double-burden faced by parents who send their children to private schools.

We must also bear in mind that private schools do more than offer alternative educational choices to students and their parents. Nonpublic schools also carry a significant part of the burden of providing elementary and secondary education in this country. If it becomes financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance will place large and unwelcomed new tax burdens on State and local taxpayers. For instance, if only one-tenth of the private school population of nearly five million students shifted to public schools, the costs to the public school system could increase by over one billion dollars, based on current per pupil expenditures in public schools.

In closing, the President has proposed tuition tax credit legislation in order to promote diversity in education and the freedom of individuals to take advantage of it, and to nurture the pluralism in American society which this diversity fosters.

I will be happy to answer any questions.

The CHAIRMAN. Thank you, Mr. Secretary.

I just have one question. How much does the Federal Government spend on public school students, per student, and how much do you estimate they would spend under this bill? Is it fairly comparable?

Secretary BELL. Well, we spend directly a bit over about $350 a student. I will get you a precise number and submit it for the record.

[The information follows:]

Question

"How much does the Federal government spend on public school students, per student, and how much do you estimate they would spend under this bill? Is it fairly comparable?

Answer

The Federal government provides both direct and indirect support for both public and private education. Accurate estimates of these types of support are difficult to make. Based on sparse and incomplete data, total (direct and indirect) Federal support for FY 1980 is estimated to have been about $666 per public school pupil and perhaps about one-fifth that per private school pupil.

Direct Federal support for public education in FY 1980 might be measured as follows:

- From all agencies for elementary and secondary purposes........................$356 per pupil

  (This amount includes Head Start, overseas dependents' schools and other activities not part of "regular" public school budgets.)

- From Department of Education program alone.....................................$152 per pupil

An alternative measure of direct Federal benefits would be the amount provided only for pupils who are assisted, rather than spreading the dollar amount over all pupils enrolled in school. On this basis, direct Federal support for public and private school children participating in Chapter I (formerly "Title I") for disadvantaged children was $526 in 1981-82.

Indirect Federal support for public education (provided through Federal tax deductions for State and local taxes) can roughly be measured as follows for 1981:

- Amount from owner-occupied property tax deduction.................................$ 92 per pupil

- Amount from other State/local tax deductions................................$218 per pupil

  Total estimated indirect Federal support...$310 per pupil

Added together, both types of support for public schools amount to:

o Direct total, all Federal agencies	$356 per pupil
o Indirect total	$310 per pupil
Total Federal support for public education	$666 per pupil

There are corresponding forms of support for private education, but these are even more difficult to estimate (e.g., the share from deductions for charitable contributions). Without counting the tuition tax credit, Federal support for students enrolled in private schools through Chapter I and other sources is estimated to total perhaps one-fifth that of Federal support for students in public schools on a per pupil basis.

For comparison, the U.S. Department of Treasury has made estimates of the level of additional support that would be made to private school pupils under the Administration's tax credit proposal. The average credit per participating private school pupil, by calendar year, is estimated to be the following:

1983	1984	1985	1986	1987
$ 89	$215	$321	$332	$326

Secretary **Bell**. We spend directly between $350—maybe, to be safe, I should say between $350 and $370 per public school pupil with our Federal aid programs.

Now, we should emphasize that private schoolchildren have a right to participate in almost all Federal elementary and secondary programs, such as chapter I. I was surprised to learn, for example, that only about 3½ percent of the private school enrollment participate in chapter I.

But in addition to that, Mr. Chairman, there are indirect Federal benefits that come to public schoolchildren: The benefits that come through the tax system, that you are well aware of when you pay your property taxes. And let me note the other Federal benefits not related to the Department of Education that affect elementary and secondary education, such as the school lunch program. There are also other types of support not factored into many people's estimates, like impact aid.

But, roughly, we would spend directly about that amount—between $350 to $370—per public schoolchild, from the Department of Education as well as from other Federal agencies.

The **Chairman**. That would make it fairly comparable to what you propose in this legislation.

Secretary **Bell**. Yes, it would, particularly if we factored in some of the other direct Federal expenditures that don't come from the Department of Education. Many feel that most of the direct expenditures for education come out of the Department of Education, but there is over $40 billion in the total Federal budget for education. That's kindergarten through graduate school. And our budget is around $14 billion. So we are a small part of the total that is spent on education.

The **Chairman**. Senator Packwood?

Senator PACKWOOD. No further questions.

The CHAIRMAN. Senator Roth?

Senator ROTH. I just have a general comment, Mr. Chairman. As I listened to some of the earlier questioning of the Secretary of Treasury I was a little concerned, because there seemed to be a criticism of this administration and its commitment to tuition tax credits. Frankly, I find it very refreshing that this administration is serious about tuition tax credits. I admit it doesn't go as far as I would like, but I think it is another example that the President, when he made a campaign promise, intends to keep it.

I would just like to point out that in my judgment the tuition tax credit would be on the books today if the past administration had maintained its campaign promise. There are two people who I think are responsible for stopping this legislation. One was the former President, and I will have to give credit to my distinguished Senator sitting alongside, Senator Hollings, who is a very worthwhile opponent. I think he and President Carter stopped it.

But I would hope that those of us who are supportive of this concept would recognize here is an administration who is helping us rather than fighting us.

One area of concern, Mr. Secretary, I think that the same argument that applied to elementary and secondary also applies to college.

Now, it is my understanding that the administration is phasing in this approach and will later come out with similar steps for college. Is your Department involved now in trying to develop such an approach?

Secretary BELL. We have been looking at the higher education situation, also. It is the fiscal pressures right now that make that difficult.

I might add also, Senator, that the higher the tuition, the more aid you get in our student aid program at the present time. And since private colleges and universities have higher tuition, students that attend there get more Federal financial assistance. They can qualify for a larger Pell grant; they can qualify for a larger guaranteed student loan. And so we are leaning a bit their way now; not to say that we have closed the door on the higher education assistance.

Senator ROTH. But isn't it true that many of those programs are extraordinarily expensive both to the Federal Government as well as to the colleges and universities to administer, so that if we could substitute some kind of a college tuition tax credit it would be much cheaper to administer and much more money would be available for those we are trying to help?

Secretary BELL. It really would. You could probably administer the program without a big piece of the bureaucracy that I have responsibility over now because of the complexity of it.

I might just indicate that the fastest growing entitlement program in the Federal Government is the guaranteed student loan program. And those who qualify for the largest loans are students who attend private institutions.

Senator ROTH. Well, I think it is important that this country maintain a commitment that all qualified young people can go to college. And I would urge and hope that the administration would move in this direction very rapidly.

Secretary Bell. I am in agreement with that, Senator.

Senator Roth. Thank you, Mr. Secretary.

The Chairman. Senator Moynihan?

Senator Moynihan. Thank you, Mr. Chairman.

Mr. Secretary, that was good testimony for which we are much in your debt.

I make the point, not to dispute but simply to reaffirm, you observed that fully 54 percent of the students in nonpublic schools have family incomes below $25,000. That seems to be prima facie the case for refundability, particularly among minorities. I think you would agreee with me that education policy begins with the principle gf universal availability of schooling; and that you want it to be available through private schools as well as public. Right?

Secretary Bell. I surely agree with that, Senator.

Senator Moynihan. On the principle you, as an educator, and a distinguished one, would——

Secretary Bell. I surely would agree with that. I would indicate, Senator, that I was surprised at that 54-percent number. In fact, I wondered about it. I thought it sounded too high. And we have done a lot of digging on that.

Senator Moynihan. Well, Senator Packwood and I have been making that point for 5 years, and we finally have impressed at least one Secretary of Education.

Sir, you just said something important about Minnesota, which surely I did not know, in terms of the duration of that experiment, if you will. It is not the first time that Minnesota has been in the vanguards of cultural policy.

Senator Packwood and I have repeatedly stated that, with respect to education, public schools come first, but that the nonpublic schools are really older, as an educational system, than the public ones and are, thus, as American, just as good, not bad—just as good, just as bad—and they are a legitimate part of our system.

We have faced the surprising concern by our friends in public education that any aid to the nonpublic schools would somehow empty out the public schools, which we just don't believe.

We began this effort at a time when enrollments in private schools were plummeting. They have now stabilized.

But would you repeat the Minnesota experience? I don't know that we all heard you as clearly as we might have.

Secretary Bell. In 1971—and, incidentally, Senator, the reason I know quite a bit about this is a member of my staff, Dr. Robert Brown, was a Minnesota State senator, and he was the sponsor of that bill in the Minnesota Legislature—and in 1971 they enacted this bill. The tuition tax credit for elementary schoolchildren was $100, and for secondary children it was $140. And in 1975 that was doubled.

Now, they had quite a struggle in Minnesota over this matter. It went to the Supreme Court, and the way the language was written it was struck down. So it has had quite a history, and since then they have had to reinstitute it with different language and in another form.

I then took the Minnesota public and private school enrollment numbers and tried to see if at that time, Senator, there was a change in the enrollment. And, if anything, it shifted a bit in favor of the public schools. So I don't think this is going to happen.

I am responding long-windedly here, but let me emphasize to the Senator that I have spent all my public life either as a public school superintendent or as an administrator in higher education. If I can personalize it, I have four sons. They go to the public schools. I prefer the public schools for myself. I think that the private schools bring that richness and diversity that we need, and I don't share the views of my colleagues who really think I am a traitor on this cause, that this is going to hurt the public schools one whit. It is a tax credit, and anything that will enhance learning I had ought to be for, and so should my colleagues. I apologize for being so long-winded.

Senator **Moynihan**. Mr. Secretary, I just wanted to interrupt you to say there are people who love the public schools, are devoted to them, as committed to them as any institution in our lives. It is just that there are also people who care for their private schools, and there is room for both.

I wondered if I could ask just one thing. We heard a very important statement, Mr. Chairman, that a new 12-to-13-year experiment in Minnesota has had exactly the effect on school balance that we proposed it would have, which is none.

Senator **Packwood**. Let me ask something here.

That initial law was struck down as unconstitutional, as I recall.

Secretary **Bell**. Yes.

Senator **Packwood**. They then changed it to apply to public and private tuition, and that has been held as constitutional by the district court. Is it before the eighth circuit and there has been no decision yet?

Secretary **Bell**. Now, so that your record will be accurate on this, I think that I ought to submit for the record a more extensive report including what happened on the litigation.

Senator **Packwood**. Mr. O'Neill is here, who is versed in this, from Minnesota, and has handled some of the cases. My hunch is he knows what the status of that case is. When he gets here, he can tell us. I think it is before the eighth circuit, and I cannot remember if they have made a decision or not.

Senator **Moynihan**. And can we get some enrollment statistics? It would be very helpful, sir.

Secretary **Bell**. Sure.

Senator **Moynihan**. Thank you, Mr. Secretary.

Secretary **Bell**. Thank you.

Senator **Packwood**. Senator, who is next? I think Senator Bradley was here first.

Senator **Bradley**. Thank you, Mr. Chairman.

Mr. Secretary, do you have any more-detailed data on income levels? You said 54 percent are under $25,000. Is there any more-detailed data?

Secretary **Bell**. We may have.

Senator **Bradley**. Would you submit that for the record?

Secretary **Bell**. I would be pleased to do that.

[The information follows:]

Question

"Mr. Secretary, do you have any more-detailed data on income levels? You said 54 percent under $25,000. Is there any more-detailed data that you have?"

Answer

The distribution of private school enrollment by income class for fall 1979 is:

	Pupils in Private Schools (000's)	Share of Private School Enrollment
Under $5,000	115	2.7%
$ 5,000 - $14,000	764	18.1%
$15,000 - $24,999	1,377	32.7%
$25,000 - $49,999	1,170	27.8%
$50,000 and over	414	9.8%
Not reporting	373	8.9%
	4,212*	100.0%

* Excluding 19,000 non-dependent children.

SOURCE: U.S. Bureau of the Census, Current Population Survey.

Secretary **Bell**. I have with me here Charles O'Malley, who is Executive Assistant to the Secretary for Nonpublic Schools, and Chuck may have some more information here. If not, we can provide it for the record.

Senator **Bradley**. I thought I heard you say that you personally were supportive of making private education accessible to all children regardless of income, and you seemed to accept that principle of universal availability.

Secretary **Bell**. I think, to the extent that we can make freedom of choice available in the elementary and secondary level, we ought to make it. We have spent a lot of money doing it on the higher education level, and if someone wants to attend a Yale or a Harvard or a Stanford where the tuition is high, the assistance is there. And we think that freedom of choice is a value that we ought to struggle for.

Senator **Bradley**. In this bill there is assistance provided for families of certain income levels that have certain taxable incomes. If you accept that universality principle, what would you suggest that we do to assist those families with incomes low, so low that they can't take advantage of a tax credit? What kind of assistance would you propose? Refundability is the most obvious example, and it would be a consistent position with what you have stated today.

Secretary **Bell**. We weighed that, Senator Bradley, and decided that we hadn't ought to go that way right now. I realize the point that you are making. We feel that, with the budget pressures that we have, we had ought to work hard to get the bill passed that we have now and see what the effect of that will be.

I think, down through the years, there may be a number of other matters we will want to consider.

Senator **Bradley**. But didn't you really have a choice here? You clearly made the choice to give credits to income levels of $75,000, but you also made the choice to not make available assistance to families with lower incomes.

Now, to be consistent, shouldn't you open it up at the lower end of the scale as well as the higher income level?

Secretary **Bell**. The amount of assistance after you pass the adjusted gross income of $50,000 is quite negligible.

Senator **Bradley**. Well, then, why did you make it above $50,000?

Secretary **Bell**. Just the converse of that, for the family that pays no income tax and therefore can take no credit, would require an appropriation, obviously, and a direct remittance by Federal check. We get into a lack of administrative simplicity, and we get into some other matters there. And we wanted quite a simple bill, at least at the outset.

Senator **Bradley**. But I take it your general position is that at some point along this road you would like to see refundability added?

Secretary **Bell**. Well, I wouldn't want to cross that bridge right now. I don't think we have taken a position on that yet.

Senator **Bradley**. Would you oppose it if the Finance Committee in its wisdom thought that was an appropriate course?

Secretary **Bell**. We would at this time. We don't think we can afford it; we think it will add other complications into the bill; we think we need to be very astute about this legislation because of the dollar demands and also because of the complexity in the legal issues involved with it.

Senator BRADLEY. Thank you, Mr. Chairman.

Senator PACKWOOD. Chuck?

Senator GRASSLEY. My colleague Senator Bradley brought up the point I wanted to explore about the $50,000 to $75,000, income limits.

I am not arguing about refundability at this point, but I was interested in the administration's position on the 50,000 phase-out with a complete phaseout at 75,000. My personal view is that these limits are higher than they ought to be. We ought to begin phasing out the tuition tax credit at 30,000 with a total phaseout at 40,000, given our serious deficit predictions.

But, more importantly, I think we ought to focus scarce Federal benefits on individuals with the greatest need. In my opinion, this would be families with incomes below $40,000.

Before you answer my question I do want to say that I am a cosponsor of the Packwood/Moynihan bill. I support the concept of a tuition tax credit, and I intend to work for a tuition tax credit. I do find the income limit part of the administration's bill is something that I would like to have changed.

Secretary BELL. First of all, we would emphasize at the outset that the credit is only $100. When it phases up to its maximum amount it is only $500 or half of the total tuition, whichever is the smaller amount.

We deliberated at great length, Senator Grassley, in a Cabinet council meeting and in our discussions in the administration on this factor, and our best judgment was, looking at income levels and fairly large families that have a number of children attending private schools, we felt that the $50,000 cutoff was not excessive. You may feel differently about that, but we would like to persuade you to accept and support that. We think it is a good level. We think maybe an adjustment below that would cut into some entitlement that we would like to see available there.

Senator GRASSLEY. Secretary Bell, I am the last member of the committee here. I have to go vote. I am going to recess the meeting. I don't think I am in a position to say that you ought to be dismissed unless there have been previous arrangements, so I would just recess until Senator Packwood or Senator Dole come back.

Secretary BELL. Thank you.

[Whereupon, at 10:50 a.m., the hearing was recessed.]

AFTER RECESS

Senator PACKWOOD. Mr. Secretary, I know you were done with your statement. Did Senator Grassley finish his questions?

Secretary BELL. Yes, and the Senator admonished that he didn't know whether I was excused or not; so I thought I had better stay close to the table.

Senator PACKWOOD. Well, let me make a statement, and you can go after you hear it. This is for the benefit of the rest of the witnesses also.

I would like to finish these hearings today. Let me give you a little chronology, so perhaps it can help you in abbreviating your statements.

On September 26, 1977, Pat Moynihan and I first introduced the tuition tax credit bill. From January 18 to 20, 1978, we had 3 days of hearings. From August 10 to the 15, 5 days of debate on the Senate floor, and Senator Hollings led the opposition very well. We could not succeed on the Senate floor in adding primary and secondary. We could pass college.

We then went to conference. We had two conference reports. The House would not accept it without primary and secondary, and the Senate would not accept it with primary and secondary, and both conference reports died.

Pat and I introduced the bill again in the 1979–80 session of the Congress. It did not have President Carter's support, and there was no point in pushing it.

We reintroduced it again this year, and we had hearings on June 3 and 4 a year ago. So I have sat through 5 days of hearings and 5 days of debate, and I recognize most of my old friends on the witness list here, and the opponents on this. And it would be most helpful—and I see we have a vote again, and we are going to have this—if you would put all of your statements in the record, and abbreviate them. Give me some time for questions; I have a few new ones—not many, but a few.

It would be my intention, if the administration is serious—and Mr. Secretary, you don't have to comment on this—but it would be my intention to try to put refundability back in this in committee. I would hope that that would not cause the administration to not support it.

Second, I want to be very, very sure about the antidiscrimination provisions in the bill. Very clearly, the administration "shot itself in the foot" with the *Bob Jones University* decision, and I have never yet understood how that decision could have been made without realizing the fuss that was coming. I am not talking about the merits of shifting from the IRS to something else, just the fuss that was going to come when it was done. And I will not support any bill unless I am confident of the enforcement procedures as far as discrimination is concerned. I think this committee will go along with that.

The reason I have prefaced this is I know that everyone who is adamantly opposed to this bill will be opposed to this bill if it has refundability or if it doesn't have refundability, and they will be opposed to it no matter how good the antidiscrimination provisions are in it. The fundamental opposition to this bill is educational policy, not refundability or lack of refundability.

As far as constitutionality is concerned, I did check that case apparently still in the eighth circuit. I don't think there are any of us in this room who can say for sure whether this bill is constitutional or not. We can argue it until we are blue in the face, but there is no way we are going to know until we pass it.

I did get a kick early on in this administration. Ed Meese was talking with me, and he said, they wanted a hand in drafting the bill that Pat and I put in last year so that they could draft it in such a way to guarantee that it wouldn't be subject to a court challenge. I shook my head and said, "Ed, this bill is going to court. Don't worry about it; it's going to court no matter how you draft it, if we get it passed."

I think it is constitutional. But there is no point in arguing it. And I would say this once more: For those who are opposed to this bill, they would be opposed to it if it was constitutional. Their objection is not constitutionality, their objection is educational policy. That may help you in the statements that you are going to make later on.

With that—I am embarrassed—I have got to vote again, but you are excused.

Secretary **Bell**. As you leave, Senator, let me emphasize that we are serious about this bill. It is a high priority with us, and we would urge you to press for passage, and we appreciate your work.

Senator **Packwood**. Well, I am delighted with that kind of enthusiasm, because you have no idea what a portion of my life this has taken for the last 5 years. I am delighted to have somebody pushing it. I really feel adequate to go to the Supreme Court and argue this myself, after all the time I have spent on it.

With that, we will take another about 10-minute recess, and I will be right back. If anybody else comes, they can start the hearing.

Secretary **Bell**. Thank you.

[Whereupon, at 11:05 a.m., the hearing was recessed.]

AFTER RECESS

Senator **Grassley**. The meeting of the Senate Finance Committee hearings on tuition tax credits will resume, and our colleague Senator Hollings from South Carolina is next on the list of witnesses.

Senator Hollings, welcome to the committee. Serving with you on the Senate Budget Committee, I know you will have a forceful explanation of your position on this issue, and you will be well informed about the pending issue.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator **Hollings**. I thank the distinguished chairman and Senator Moynihan.

If I might try to shorten it some, I would ask unanimous consent that my entire statement be included in the record.

Senator **Grassley**. Without objection, so ordered.

Senator **Hollings**. I will try to summarize.

Quickly, and to the point, various comments, one to the effect that back in 1978 there was a filibuster. Our distinguished colleague from Oregon was part of that. The fact of the matter was that the tuition tax credit bill, the Moynihan/Packwood bill, came to the floor on an agreed-time basis. There was no filibuster. There were 51 cosponsors for that particular bill, and it did take 3 days of debate.

Therein is the dilemma. As the distinguished chairman is alluding to the fact that he and I are both on the Budget Committee; this is the Finance Committee. The exception of involvement in education is the distinguished Senator from New York who understands and knows well the field of education. But in a general sense a great attribute of the national Congress in this committee system is the expertise within the staffs and the Senators thereon who are interested in a particular subject.

It is a rather ironic situation that we bring one of the greatest initiatives in education before a finance committee.

I found back at that particular time, 4 years ago, they needed, with 51 cosponsors, an educational session. And I am not being facetious. We had to really get onto the floor and with the colleagues and in the halls to explain the magnificence of public education and its tremendous success. There had been a downgrading generally. I would see a neoliberal crowd that "Well, we need diversity, and thereby let's give some money to private schools on the basis of fairness. After all, they are relieving public education of a financial burden, so they deserve an award there." Well, we had to bring that down to the hard facts. In many a municipality with a swimming pool and a municipal golf course, like in my home town, does that mean that we should send immediately a check to the country club in Charleston because they have relieved the taxpayers of the burden of those playing golf there? Or to everyone with a private swimming pool a pool tuition grant, or whatever, because they have relieved the public pool of crowding and the financial burden thereof? Obviously it is tommyrot.

Senator GRASSLEY. Education is one required governmental service, though. Very few others are.

Senator HOLLINGS. Right. And 75 percent of the families, Senator Grassley, 75 percent of the families in America do not have children in the public schools or private schools.

Now, if you want to use a user-fee proposition or approach to it, fine; just destroy all of public education. But the fact of the matter is there is many a bachelor and everybody else who has been taxed and it has worked extremely well. And we had to correct that history where John Adams had stated that the whole people must bear the burden of educating the whole people and be willing to pay the expense of it. And we had to bring out, in correcting, the idea that they were all church schools, and that kind of thing, and that was the policy on the contrary in 1789 in the Northwest Ordinance and the Land Ordinance in those years. What you had was an allocation of lands in the West, out in Iowa, of 6 by 6 miles of 36 blocks square, where the middle block, 16, was reserved for public education.

So, in the formative days 200 years ago public education was the policy, and it has worked extremely well. Ask the people in California. When they got proposition 13 and it passed. When asked what they should eliminate, they went down a long list of "clear out city hall, close down the parks," even "limit the fire department and law enforcement agencies," but last of all, "do not take away from our public schools."

I jump immediately to my own state. I just have run into Mr. Hughes here, who is on the Department of Education here in Washington, from our Greenville public school system. One of the great reasons that we have had success in attracting industry, Senator from New York, down into this particular area is a strong public education system.

For those neoliberals who think that now we've got to go to the age of robotics and the implementation age and by Federal approach reeducate all of America to go from the field into the computer, we do that and do it successfully already because we have a strong public education program.

I can take, and have done it, and am doing it, minority employees from rural farm areas who have been trained, are educable on account of public education's success, and are trained and are producing robots for Mintz of Ohio and Cincinatti Milicron. I've got two, and I've got a third one coming. And I have got Japanese industry in Akio Morika, and the rest of them bring Sony to Columbia, S.C., because our workers are productive, and they are educable. They are trainable and immediately adapt into the most sophistication of production as the result of the success of public education.

So, therein is my emphasis. We have in public education a tremendous success story. We have in public education the proposition of fulfilling a responsibility, and there is a diversity in the 107,000 schools, over 16,000 school boards, to look in comparison to private education where 90 percent of it is church related.

I had a friend go over to the Catholic school in Alexandria. They have to take an hour of catechism a day in that Alexandria school. I respect that, and I don't want to make personal references—married, Catholic, and otherwise. I respect religion, but I also respect the function and responsibility of the public body and us as public servants, and the primary responsibility we have is to its public education, and to its private education, is to leave it alone. And that's why the South Carolina Christian schools oppose this bill. They do not want that involvement. And the church schools are now coming around to that particular point.

Now, if you had any idea that this would work—and let's look affirmatively—let's assume, bam-bam, we had it in the law. What you have really done is set a precedent, in essence, for general support for education for the first time at the Federal level. I was rather amused a minute ago that the Secretary of the Department of Education used a $340 figure totally out of the air, out of the whole cloth. What we have, in reality, if the question and the thrust was, "Look, we are giving now to public education from the Federal level," does this particular bill sort of equalize the gift as concerns the private school student? Absolutely not. On the contrary, we, right now, have categorical grants. There is no general assistance from the Federal level. They have title I for disadvantaged, for specified purposes—for remedial reading, for bilingual education, and everything else.

Senator Moynihan knows, and it is in his statement which I have, that averages $128 for the public school student and slightly less than $70 for the private school student—right now, right this minute. But it is all categorical.

What you are doing, what you are doing in this committee that everybody is so wonderful for, and you get a burning in your belly for this nonsense that they are talking about, is really for the first time assuming the responsibility at the Federal level for general financial assistance to education. And where are they giving it? To private schools and not to public schools.

So you are putting the public schools at a disadvantage. We won't stand for it, on the basis of fairness. As public servants we will come around and we will equalize it, or at the States level they will all pass tuition bills with an exemption up to a certain level so that they can qualify, and everything else of that kind.

Incidentally, referring to the *Minnesota* case, which is similar to the *Rhode Island* case already overruled in the *Rhode Island* case at the appellate level and it's on appeal, we can go right to that particular case and understand that the States themselves could approach this.

Now, since 8 cents out of the dollar, Senator Bradley, goes into public education from the Federal level under these categorical grant programs, 92 cents comes from the State and local level. Why not go ahead where the 92 cents is—and the responsibility of education is at the state level—why not go ahead and approach it from that particular point? And they have.

There have been 13 referendums, notably right here in the District of Columbia, where the people themselves have turned down this nonsense, as well as the Supreme Court. I could go at length with the *Nyquist* case, and the unconstitutionality of it.

I think what you should understand is that here you have the most outrageous of measures. And I use that word advisedly. Here we are, the "gang of 17" down in the White House the other day, and we are trying as men of good will—House member, Senate member, Republican member, Democratic member—and we have just taken $2 billion from title I of the disadvantaged, knocked 2 million kids off of that program in the cuts that we have effected. And, having taken some $2 million with the $2 billion cut, please, my gracious, the President of the United States is up in Chicago that afternoon taking that same $2 million from the disadvantaged in the public and giving it to the advantaged in the private.

I don't see how he or the Secretary of Education can come with face, here, with the responsibility of public education, recommending the dissolution of his responsibility, the Department of Education on the one hand, and talk about giving financial aid to private education on the other hand. That is outrageous; it is blasphemous; and there is no question in my mind, when you look at the various measures, about their dedication to it. They veto bills that come for housing, whereas Assistant Secretary Altner from the Commerce Department is saying in the morning Post, "We ought to break the logjam somehow and ease the money supply, Mr. Volcker."

What we were trying to do is to break the logjam on unemployment and impact upon and create some 700,000 to 800,000 jobs. And it was characterized in the veto measure as "a windfall, a bailout." Here we are vetoing, trying to do something for the unemployment is a bailout, and going to the wealthy with straight face and come with a bailout. And we are being questioned, "Are you enthused enough about it?"

The fact of the matter is that we are trying. We have not gotten it to the floor, but his distinguished group has submitted to us some $20 billion in tax increases.

Now, before you can even get it to the floor with tax decreases, where can you get any credibility amongst the colleagues for the seriousness of the purpose of having now to increase taxes, when you back in the committee room are decreasing them? And not for your responsibility, namely public education, but for a spurious measure that has come out of the flanks, got into the Democratic Party. President Carter did support it. We had to fight those votes. He was not too effective over on the congressional side, as we all know, but in 1978 he had been elected on a 1976 platform. We got it out in 1980, in July, in New York. And now the Republican Party has picked it up.

More than anything else, it is involvement. Here is an administration that says, "We are trying to unfetter, get the Government out of involvement with private endeavor."

I had one daughter attend the Cathedral School there in the District of Columbia. I had another daughter graduate from the public high school, Woodrow Wilson High. So I respect and know the demands of both and the contribution of both. But here the idea is to take and not "involve" the National Government in Cathedral School or in any other private school of America.

And yet, your all's close questioning goes right to the heart of the discrimination and everything else, and that's the basis of their operation. Ninety percent being church-related discriminate as to a particular religion. That's their right. I am not questioning it. But I certainly question any idea of Federal financial support of it.

Let me stop right there and answer any questions that you have.

[The prepared statement of Senator Hollings follows:]

Testimony of Senator Ernest F. Hollings
Tuition Tax Credit Proposal
Senate Finance Committee
July 16, 1982

Mr. Chairman, members of the Committee, thank you for the opportunity to appear here this morning to testify concerning S. 2673, President Reagan's tax credit for tuition proposal. I know that there are a good number of witnesses here today so I will be brief in my remarks. It is my understanding that there will be several member organizations of the Coalition for Public Education testifying before the committee. At this time, Mr. Chairman, let me associate myself with their remarks on this legislation. I know them to be diligent, serious and knowledgeable experts on this subject. Their remarks bear close attention, and, in my opinion, careful heeding.

I suppose my position in opposition to tuition tax credits is well known. I opposed the idea when it was debated on the Senate floor in 1978 and since have not hesitated to speak out against the scheme. During that debate I made a comment that summarized my opposition. I think it is just as relevent now: Careful study convinces me that tuition tax credits would turn our nation's education policy on its head, benefit the few at the expense of many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the First Amendment to the Constitution, and destroy the diversity and genius of our system of public education.

Before I comment on my specific objections to tuition tax credits, let me comment on the incredible timing the White House displays in sending this measure up for consideration. I, for one, have taken to heart earlier remarks by members of the tax writing committees that there was no hope for consideration and passage of tax credits this Session. But, here we are, apparently giving serious attention to this ill-advised notion. Yesterday's Washington Post carried a report of an interview with White House Chief of Staff James A. Baker, III. He commented on the White House's legislative priorities for the remainder of this Congress. Prominent on that list was the tuition tax credit bill. In the opinion of this Senator that's sheer folly and a fine example of political pandering.

To me it is simply unconscionable how the Administration can have the temerity, in light of the very real and significant economic difficulty confronting the nation, to bring this multi-billion dollar uncontrollable entitlement program to Congress. As we struggle with the highest deficit budget in our nation's history, push the spiraling national debt to still higher levels, debate the necessity of an amendment to the U. S. Constitution mandating a balanced budget, and are set to discuss a far ranging tax increase, yes, tax increase, just next week, I dispair at the White House's logic. The Administration's action sends all the wrong messages to financial markets and a nation desperately in need of a showing of the government's fiscal stability and responsibility. The Committee's complicity in even holding these hearings on this most ill-advised idea does absolutely nothing to indicate to the American people that we desire to get on top of the fiscal mess consuming the financial well-being of each of us. Just think about it. Next Monday afternoon this Committee is scheduled to lead the charge to raise taxes, raise revenue, in order to reduce the huge deficit. Yet, here we are today, holding hearings on how to start a vast new federal spending program that, incidentally, will benefit some of this nation's wealthiest individuals. The contradictions inherent in bringing this matter to the Senate at this time are obvious, I am certain, to many, many citizens around the nation. In light of this it is no doubt why we are increasingly becoming a nation of cynics.

Not too long ago, the Senate joined the House and overwhelmingly passed a program designed to stimulate home building and have a positive impact on our economy. In vetoing that legislation the President stated that the program was a "bailout" for the home builders and too costly. I ask you, however, what message does the President send a beleaguered economy when he sends Congress a multi-billion dollar "bailout" for the nation's private schools? Can't you see how that undermines the credibility so necessary to make economic recovery possible?

And if the Administration's poor timing and illogical fiscal message was not enough, this Administration proposes tuition tax credits on the heels of shepherding through Congress the most drastic spending reductions in programs for education and nutrition that we have ever seen. Take just one program for example: Title I for educationally disadvantaged students. Since I follow Secretary of Education Bell before this Committee, let me point out that his Department has been before Congress to point out the favorable impact this program has had. The National Assessment of Education Progress gives the program high marks. It is universally respected for the work it has done to upgrade the basic education skills of literally thousands of children from weak educational backgrounds. The rising scores on the standardized tests are a tribute to the achievement in learning that this program has underwritten. With this kind of universal praise one would think it would be well supported. Sad to report, under the budget plans proposed by the Reagan Administration this valuable program was targeted for over a forty percent spending reduction in two years. Fortunately Congress interceded and has kept some of that from happening. But, Title I is not an isolated case. Aid to the Handicapped, Vocational Education, Head Start, School Lunch, WIC, Guaranteed Student Loans, Pell Grants and others are part of the list that have felt the reductions. With the programs to assist the needy cut, now comes the White House with a multi-billion dollar uncontrollable entitlement program designed to aid some of this nation's wealthiest individuals. Money is being taken from the poorest among us and being given to some of the wealthiest and most priviliged.

Frankly, Mr. Chairman, given the economic picture facing the country I am surprised to be here today testifying. I think sending this bill up shows the Administration's conscious disregard for the fiscal problems confronting us. The recession persists, interest rates are unbearably high and stifling and over ten million are out of work yet here comes the Admistration with a new multi-billion dollar spending program. Pity those who can find solace in that kind of policy.

Regardless of the lack of common sense involved in the White House's timing, the case against tuition tax credits is a strong one at any time. As I mentioned the panelists that follow me will more than adequately make this impressive case. Let me briefly state my reasons for opposing tuition tax credits, however.

Proponents of tuition tax credits make one basic mistake in arguing for their proposal. They start with a basic premise that the federal government has an equal duty to both the public and private schools. Let us be clear from the outset that the duty is not equal. The government's duty to the public is to provide public schools. The duty of the government toward private schools is to leave them alone. That's fundamental.

At present the federal government provides assistance through categorical programs designed to assist the economically and educationally disadvantaged in both the public and private schools. With the full implementation of tuition tax credits, the private schools will receive over four times what the public schools receive. And with the disparity between individual school districts and the massive spending cuts I have mentioned, this disparity is likely to grow worse in many of the districts. And, if the growing disparity is not enough, tuition tax credits represent general assistance. Never before has the federal government provided general assistance to our elementary and secondary schools. And, I fear, with the availability of this kind of aid, I foresee the possibility of state governments looking upon tuitions for public schools with greater favor--especially with the spending cutbacks.

The public school is bound by both law and conscience to reach out to every child as a matter of his or her birthright. This is what public education is all about. They educate over 90 percent of all our youngsters, expand equal educational opportunity and provide every child with the chance for a better future. Contrast this to the fact that many private schools have been created for the specific purpose of closing the doors of economic and social opportunity. Clearly with the weak enforcement provisions in this legislation there would be great opportunity for these "segregation academies" to receive funding.

While the cost of the President's tuition tax credit program starts at a modest level we all know where it's headed. It will be for elementary and secondary school children, but the President himself has commented that he expects to have it quickly expanded to the college level, and with no controls for the income of the recipient you can easily see how the cost for the program will grow and grow. Every cost estimate for the tuition tax credit program indicates a multi-billion dollar figure annually when the program is operational.

Not only is the tuition tax credit proposal unwise, it's patently unconstitutional. It violates the establishment clause of the First Amendment. That's precisely what the U. S. Supreme Court held in the Nyquist opinion in 1973, an opinion that has been upheld by the Court since. And, another case is likely to be decided in the next term of the Court that would further define the constitutionality of tuition tax credits.

I am confident that the case against tuition tax credits will be well presented here today. In my opinion there is ample reason for the Finance Committee to reject this idea because it reverses sound education policy, busts the federal budget and is patently unconstitutional. Given the persistence of the White House in pushing this idea, and the strong efforts of its proponents in Congress I expect we will have the opportunity to debate this matter in some detail if it should come to the floor later in the year.

One final thing, Mr. Chairman. Proponents of this legislation are always quick to point out that parents of students attending private schools pay twice for their child's education, once in tuition costs and once in taxes for the public schools. I would like to answer that. Everyone has a duty to support the public schools. Single taxpayers, older taxpayers with non-school age children, widowers, etc., all pay taxes to support our public schools. If we are going to give tax credits to those who have their children in private schools and who do not "use" the public schools, then perhaps we should consider giving tax credits to those taxpayers who have no children in schools and relieve the public schools of any burden. By the end of this decade it is estimated that only 19 percent of all families will have children in school. If we relied on a "user fee" concept to fund our public schools we would seriously limit our human capacity as a nation and our place of leadership in the world community.

And, since public education is primarily a state and local matter, why don't proponents of tax credits go to the state capitals for tax credits? Taxes levied to support the schools are primarily state and local taxes--only about 8 cents of every education dollar comes from Washington--so why don't proponents seek their reimbursement from state and local governments? The answer is easy enough. It has been rejected in every State referendum--13 since 1966, most recently the District of Columbia. And, tuition tax credits have been turned down numerous times in state legislatures. Clearly it is an idea that has little support among the voters or outside Washington.

Senator PACKWOOD. Fritz, I don't have any questions. I don't find your argument valid as to the swimming pool, which is the one you use all the time. The State doesn't compel us to learn to swim; it does compel us to go to school. And I find that a significant difference.

I am not suggesting the States get out of compulsory school, but I just don't think the analogy is the same as somebody who voluntarily puts in a swimming pool and says, "Well, private school tuition is the same as a swimming pool."

Senator HOLLINGS. Well, let's say this then go to another example. They do require law enforcement.

Now, I would like to take the distinguished colleague down to my backyard, and I can take you from Hilton Head on through all the particular developments. They have security there in those particular counties, and you have a law enforcement requirement, let's say. And the security personnel. Should I send a check to Wild Dunes because they are relieving the County of Charleston of the responsibility of law enforcement there? It is required, Senator.

Senator PACKWOOD. I don't make the argument nor defend tuition tax credits on the basis of the relief of the public school system. I make it on the basis that the diversity is good for this country and we are better served rather than more poorly served by diversity of public and private school systems.

Senator HOLLINGS. That is a difference of opinion; but there is a responsibility. The original point has been made, and I happen to think that the diversity is with the 107,000 public schools, which is some 16,000 public school boards in this country. That is real diversity, where you don't have the similarity.

You see, the private school does not have to accept the discipline case, does not have to accept the unprepared, does not have to accept the bilingual, does not have to accept the handicapped. And all of the diversity in the cross-section of American society, as Horace Mann pointed out some years ago at the turn of the century, is found within the public education system.

Justice Douglas said, "Yes, the public schoolteacher was the architect of the New America that has devolved," the public school itself being the body of devolvement.

Senator PACKWOOD. I have no further questions.

Pat?

Senator MOYNIHAN. Well, just to welcome an old adversary and to acknowledge—do I gather that this legislation is now, as he puts it, being advocated by "the neoliberal crowd?"

Senator HOLLINGS. Well, I don't know who is the advocate. Yes, it is, in large measure. Some of them are. Yes.

Senator MOYNIHAN. Are you accusing Mr. Reagan of being part of the neoliberal crowd? [Laughter.]

Senator HOLLINGS. I was referring not to the sponsorship. I was referring to the neoliberal crowd as to the approach of education. I see I have to talk a little and try to educate you, sir.

I know about technical training of the skills The neoliberal crowd has yet to locate an industry—very small, very little. I will compare my record with them any time, anywhere.

I know firsthand that what we need is not enterprise zones; we need enterprise. I know what we need are the skills, and the reason I can retrain rural workers into robotics and into making of the most sophisticated computerization very quickly is on account of the success of the public school system that is not appreciated, yes, by the neoliberal crowd.

Senator MOYNIHAN. Well, I just want to know who. Is Bob Packwood one of them?

Senator HOLLINGS. Well, I will go back to the training. I was trying to focus a little on public education. It is very difficult.

Senator MOYNIHAN. Is he one [indicating]? Is that one [indicating]? [Laughter.]

Senator MOYNIHAN. He's got a tie on.

Senator HOLLINGS. I will have to go back to the Washingtonian for a reference on that point and find out who they did——

[Laughter.]

Senator MOYNIHAN. All right. Could I just make one point, where you know we do have a point of difference, just to record it, Senator?

You said Horace Mann at the turn of the century, and his general proposition. As you know, Horace Mann's mature years as an educator began, I guess, in Massachusetts about 1830. The point about constitutionality, and the point that we would like to repeat, and I don't think it would be disputed, is that the American education system began both at the higher education level and elementary and secondary as an entirely private, almost entirely denominational school system. There were no other schools.

There was no elementary, secondary, public education in the South until after the War Between the States. In New York they begin about 1805, and aid routinely went to denominational schools at the outset and for almost two generations exclusively because there were none other.

The Public School Society of New York State was formed in the 1840's out of the denominational Protestant schools over the question of Bible, that great issue of the Douay Bible and the King James Bible which people can hardly remember but it was "the fighting faith" one.

Then you get a gradual emergence of the public schools after the denomination schools. I only want to make the point that these are not new institutions; they are in fact the older ones. And the question in public policy is, Is there a public interest in seeing that they continue in about the proportion they have been for the last almost, not quite, two centuries?

Senator HOLLINGS. Well, the older ones, like Phillips Exeter, with that cutoff—I don't know what the median income is now that you all have decided, whether it is 50 or——

Senator MOYNIHAN. Phillips Exeter, sir, was always a boarding school.

Senator HOLLINGS. Right. There are excellent ones that you refer to.

Senator MOYNIHAN. The schools I am talking about, in the Catholic denomination, are called parochial, meaning "parish," meaning "neighborhood."

The first schools of the United States in the Northeast, where they began, were neighborhood schools: the neighborhood Baptist, the neighborhood Lutheran, the neighborhood—et cetera. They were not boarding schools; they were just neighborhood schools.

Senator HOLLINGS. Well, the answer is clear: I do not believe we have a responsibility to support the parochial schools of America. On the contrary, I believe we have a duty not to support the parochial schools.

Senator MOYNIHAN. That's right. We don't share that view, but I just wanted to make the point that these are not new schools; they are old schools. That's all.

Senator HOLLINGS. Well, the old school, like the Boston Latin School, was a public school. The genesis really was coming from England where the Episcopal Church ran the schools. And that was how this started, and I will agree to that original history.

But we really started in with public education as a fundamental charge in this Republic, and it has continued and it has succeeded, is my particular point.

Senator MOYNIHAN. Sure, it succeeded. It is one of the best school systems in the world. Others might say theirs are just as good.

Senator GRASSLEY. Senator Bradley?

Senator BRADLEY. Thank you, Mr. Chairman.

Senator Hollings, I would just like to try to get to the core of your objection to the legislation. If it wasn't tax credits would you still be opposed?

Senator HOLLINGS. Oh, yes, sir. I think that you have the involvement in what we call "unnecessary entanglement."

Senator BRADLEY. So your fundamental objection is the question of church and state?

Senator HOLLINGS. Not necessarily, all of them are fundamental. But let's go right to the point of what you and I, the Budget and Finance Committees, are really concerned with, the cost of Government.

How do you start? Hell, when we have been cutting, cutting, cutting—we started, you know, with the first reconciliation bill by President Carter. With a lameduck Congress and a lameduck President we passed an $8 billion cut in December 1980. And that's how extreme the need has been. We have recognized that on both sides of the aisle, Republican and Democratic.

Here, in the middle of trying to cut back on title I for the disadvantaged, eliminating 2 million of the kids from the particular assistance, how can I come with any kind of face and give money to private or parochial education?

Senator BRADLEY. I understand our current budget circumstance, but in 1978 we didn't have the current budget circumstance, and what was said today—I wasn't here—there were 3 days of debate on the floor, and the issues were joined by the same parties.

My question to you is, Can you conceive of any form of legislation, in any period of prosperity, that would aid the parochial schools of this country that you would support?

Senator HOLLINGS. Not at the elementary and secondary level, because you have the excessive involvement and entanglement there. At the higher education level the private colleges of America do not require the catechism. It's hard to get the folks to chapel, as you and I both know. We have served on college boards, and everything else, and we have outstanding church universities. I have served on the board of several of them. But you have the maturity of the students that comes in then as a factor, and you come into the regular programs there that really don't require the inculcation of religious teachings.

So, if you had the richest nation, and we were sitting around with fat surpluses—if that is your question—should we then, looking at private education, award a tuition tax credit or some kind of financial assistance, no.

Senator **Bradley**. That was my question. Thank you.

Senator **Hollings**. Yes, sir.

Senator **Moynihan**. Mr. Chairman, may I just state, we have a vote, and the managers of the reclamation bill have asked me to call up the amendment I have next, so I won't be back for a little bit, which is only in response to a request of the managers.

Senator **Grassley**. Thank you. We understand.

Senator Hollings, I have no questions. I appreciate your participation.

I am going to recess the meeting, but I do want to inform the next panel that Senator Packwood left early to vote so that he could be back here to keep the meeting pretty much on schedule.

The meeting is in recess until the call of the chairman.

(Whereupon, at 11:42 a.m., the hearing was recessed.)

AFTER RECESS

Senator **Packwood**. I apologize for the time this is taking. There is going to be a series of more votes, and we will just have to plug along as best we can.

We will take a panel of Mr. Ronald Godwin, Rev. James Lyke, and Nathan Dershowitz, unless they have all gone.

Mr. **Dershowitz**. I can assure you, Senator, I am not all three. [Laughter.]

[Pause.]

Senator **Packwood**. Why don't you start, Mr. Godwin?

STATEMENT OF DR. RONALD S. GODWIN, VICE PRESIDENT, MORAL MAJORITY, INC., WASHINGTON, D.C.

Dr. **Godwin**. Thank you, sir. I appreciate the opportunity to testify this afternoon with respect to S. 2673.

As a past school principal with some 14 years of experience in both private and public education, I bring to this hearing views based on both professional training and personal experience. I have a masters, and a Ph. D. in educational planning and management, and I have long been more than casually interested in the issue before us.

I believe very strongly that the choice between public and private education is a basic right, and it is primarily the responsibility and right of parents to see that their children's education reflects those values in which they themselves believe. Education should not, in my opinion, be a process of separating young students from the values which are held in the home but rather should be reinforced, a system of reinforcement for those traditional values and beliefs. I believe, then, that parents have a right and a responsibility to choose a school in which they have confidence and which they can support enthusiastically. That is really the underlying and undercurrent, the bottom line, so to speak, of this entire debate—do parents have a right and an access to choose a school in which they have confidence, and which they can support enthusiastically?

Freedom of choice and diversity in education should be encouraged by Congress. While public schools are an essential mainstay in our pluralistic society, private schools also claim an important niche, and several members of the committee have stressed that it is a historical niche and that they have been in this Nation since its beginning.

Private schools are free to reflect particular parental values while public schools, to a large extent, are unable to promote these same values. For many parents private schools provide vital ingredients to their children's education.

I am concerned that public schools in America have been treated to nearly the same privileges as that of a State church. Everyone, no matter what they believe, is required to support them. Those who disagree with or want something else from public education for their own children are only allowed to have access to alternate educational systems after they have first paid their dues to the Government educational system.

True freedom would allow parents, of course, to send their educational dollars where they see fit. The Educational Opportunity and Equity Act brings us closer to that ideal. Tuition tax credits only partially relieve parents of the burden of paying twice when they decide that a private school is the best for their child, but it is a step in the right direction.

Critics, of course, have long predicted that such an act would destroy the public school system. Albert Shanker, president of the American Federation of Teachers, says, "They," referring, of course, to tuition tax credits, "would lead to the destruction of public education by giving parents a financial incentive to remove their children from public schools and place them in private and parochial schools."

This objection is revealing in that, if the present system serves our Nation so well, why would a small tax credit limited to a maximum of $500 cause students to flee the public schools in such numbers that the public schools would be destroyed? Either the statement that the public schools would be destroyed is untrue, or there is such widespread dissatisfaction with the public schools that the only thing holding them together is the financial burden that is placed on supporting private education.

The proponents of this particular view must hold the public school system in very low esteem if they truly believe that passage of this bill would lead to the demise of public education.

I don't believe that argument, and I haven't heard it raised with any strength this morning. I firmly believe that public schools would quickly be strengthened, not ruined, by the passage of this bill. I believe that because of the new options parents would tend to evaluate more carefully the education their children are receiving and would become more involved in the educational process. I believe that competition for academic excellence would be encouraged, and the public schools would be motivated to strive for higher academic standards.

I have no doubt that the public schoolteachers of America would soon be enjoying higher wages and delivering a measurably better education if, in fact, this legislation was passed. I believe that such open competition would benefit public schools far more than private schools in the long run.

Senator **Packwood**. Mr. Godwin, let me ask you this. I have read all of the statements that were in as of yesterday, and I have had a chance to read most of them. I have a feeling I am going to be the only one left today, and there are 18 witnesses left to go, and there are going to be about five votes between now and the time we finish this afternoon.

Dr. **Godwin**. All right. And you are begging for brevity.

Senator **Packwood**. That's right.

Dr. **Godwin**. I appreciate that. I would like the entirety of my written testimony submitted in the record. In closing, I have made the one particular point that I felt most strongly about, Mr. Packwood, and that is the point that I firmly believe, as both a public and private educator of many, many years, that the open, grassroots, free enterprise, marketplace competition that would be introduced to our educational system by the introduction of this legislation would be of a strongly, healthy benefit to both the private and public sectors of education.

I am not going to argue the constitutionality or any of the other aspects. I would say this, though, for the record, that Moral Majority stands against any bill that in even the most subtle and indirect manner would aid discrimination. That's one additional point that I would strongly like to make.

We believe that the triple protection that is contained within the bill would in fact protect against this danger. I feel confident about that.

I heard Mr. Bradley raise the question earlier today, how many Internal Revenue agents would be assigned to police the schools? I was interested in the fact that he was concerned about there not being enough. There is a large element of our private sector who are quite concerned about the already evident enthusiasm of the Internal Revenue Service with investigating the private schools, and I don't feel that there would be any lacking of zeal or commitment or enthusiasm on the part of the Internal Revenue Service to see that the bill was properly policed.

And so I do appreciate the opportunity to testify and to have made these points that I do feel are important, and I will answer any questions you have.

Senator **Packwood**. I will let the panel finish; although, I like on page 2 in your reference, here, the term "freedom of choice." I think choice is a good policy and it should be extended to a great variety of Government policies.

Bishop Lyke, it is good to have you with us again.

STATEMENT OF THE MOST REVEREND JAMES P. LYKE, AUXILIARY BISHOP OF CLEVELAND, CLEVELAND, OHIO

Bishop **Lyke**. Thank you very much, Senator.

I have an already-abbreviated statement of a longer statement; but, out of respect for your request, I shall try spontaneously to abbreviate what I have.

Mr. Chairman, members of the committee, my name is Bishop James P. Lyke, and I am the auxiliary bishop of the Catholic Diocese of Cleveland, in Ohio, and vicar of its urban region, which is the city of Cleveland.

Today I represent the Catholic bishops of the United States. I refer you to former and lengthier remarks, both of last year as well as the lengthier version of what I present today.

I allude briefly to my own background in parochial education. My mother was on welfare, and she washed church laundry in order to pay my tuition and fees. We chose parochial education, Catholic school, because the public school which I would have attended was overcrowded, lacked discipline, and in the mind of my mother lacked good educational opportunities.

Over the years the representatives of the U.S. Catholic Conference have testified before the committees of Congress on many issues such as basic entitlement programs, food stamps, housing, legal services, voting rights, and the support for public education programs.

One essential element underlies the church's position on all these issues. That element is the undeniable, irrevocable dignity of the individual, a dignity whose recognition and respect must be the cornerstone of all public policy in this country.

In testifying on low-income housing earlier this year I stated that each individual possesses an inherent dignity, because he or she is created in the image and likeness of God and should have the opportunity to grow and develop his or her potential to the fullest extent possible. This development is threatened whenever social and economic forces dehumanize or degrade people.

This principle is equally applicable to tuition tax credits—and then I go on a little bit more there.

May I go later in my even abbreviated testimony and refer to the President's bill?

I want to make several points concerning specific aspects of the President's Educational Opportunity and Equity Act. Before doing that, however, I would like to say that the U.S. Catholic Conference is extremely pleased that the President has submitted to Congress, as promised, legislation which makes a positive contribution to providing educational equity to many families who otherwise might not have the ability to exercise their parental rights.

My first point is that the income limitation proposed by the President is a positive indication that the legislation is intended to assist middle- and lower-income families. It is concern for these families which has caused the Catholic Bishops to speak so often and so forcefully on this issue.

Second, the U.S. Catholic Conference supports the antidiscrimination provisions which would deny the benefits of tax credits for tuition payments to schools which proscribe racially discriminatory policies.

Third, we believe the legislation should be strengthened by two additional changes: We are firmly convinced that the inclusion of a refundability provision would assist those families who pay no Federal income tax and who would otherwise be excluded from receiving tuition tax credits. We believe no children should be precluded from receiving an education best suited to their needs just because they come from families whose parents do not pay Federal taxes.

We also believe that tuition tax credits should be available to students at all levels of education.

In summary, the Catholic bishops are firmly in support of tuition tax credits which will support and enhance the rights of parents to make educational choices for their children. This issue is a matter of social justice for families and for our entire society, since it is an issue which directly affects the lives of children.

Tuition tax credits protect freedom of choices in education, and in so doing they recognize the dignity and the rights of children and parents regardless of economic background. There is no more compelling argument in favor of them. Congress must act on this issue, and act on it now.

I thank you.

Senator **Packwood**. Bishop, let me ask you a question. What is the range of tuitions in the parish schools in the Cleveland Diocese?

Bishop **Lyke**. In the Cleveland Diocese our average per-pupil cost is $635. The average cost for a child in the public school in Cleveland, however, is roughly $2,300.

Senator **Packwood**. That is your cost; what is your tuition?

Bishop **Lyke**. It varies. Parents in our inner-city schools pay anywhere from $300 to $700. In the school immediately across from my residence, 97 percent of the people last year qualified for food stamps.

Senator **Packwood**. That is important information, because the argument is forever made that this is a rich person's bill to help them send their kids to Phillips Academy. And the overwhelming bulk of the people that are going to benefit by this are not going to schools that have a tuition of $5,000 or $6,000 or $7,000 or $8,000.

Bishop **Lyke**. Absolutely. And, certainly in the inner-city areas of our country, Senator, we are serving the poor of minority communities. And I might add that in that same school of which I spoke, 80 percent of those children are not Catholic students. So we are not reaching specifically for people of our own religious tradition, we are reaching for students who want quality education, as sense of values, and a good direction for life.

Senator **Packwood**. I share your hopes.

Mr. Dershowitz?

STATEMENT OF NATHAN DERSHOWITZ, DIRECTOR, COMMISSION ON LAW AND SOCIAL ACTION, AMERICAN JEWISH CONGRESS, NEW YORK, N.Y.

Mr. **Dershowitz**. Thank you, Senator.

I am the director of the Commission on Law and Social Action of the American Jewish Congress, and I am also general counsel to the National Coalition for Public Education and Religious Liberty, National PEARL, and also the New York Committee for Public Education and Religious Liberty, which is New York PEARL.

The testimony I am submitting, however, is on behalf of the American Jewish Congress. The American Jewish Congress is a member of the PEARL umbrella organizations. We are also a member of the National Jewish Community Relations Advisory Council, and I have been asked to circulate my testimony to the numerous groups which are members of these umbrella organizations, to see which want to join in the testimony. Time did not allow me to do that prior to today's hearing, so you may be receiving notification from some of them that would like to join in the testimony.

While we recognize the economic difficulties parents of nonpublic-school children experience, we believe that it is in the best interests of the American public in general, and the American Jewish community, in particular, to oppose tuition tax credits.

Tuition tax credits undermine private religious education because governmental funds always come with strings attached. The bill itself recognizes the concept by denying credits to parents of students who attend profitmaking schools or schools which discriminate on the basis of race, color, or national origin.

We do not believe, as some have said, that the fear of Government regulation is unrealistic. A few recent examples should prove the point.

As members of this committee may remember, only a few years ago the IRS attempted to expand the policy against nondiscrimination into a policy of affirmative action, in a manner fundamentally inconsistent with the rights of religious schools to control curriculum, admissions, and scholarships. Although the Congress intervened to stop that effort, the political process may not always respond and protect these religious institutions.

Private litigants, for example, are now in court seeking, solely on the basis of the tax-exempt status of religious schools, to have the judiciary implement these very rules.

Similarly, the Catholic Church's tax exemption is being challenged in court by private parties on the ground that it advocates legislation with respect to abortion.

These risks, of course, exist merely as a result of tax exemption; but, as we know, the risks are compounded as the amount and nature of Government involvement increases.

Significant studies indicate that tuition tax credits, especially without refundability, predominantly favor the upper-middle class and the wealthy, and it is unclear that such credit actually will help the poor and minority groups.

There are other studies whose validity is being challenged which question those results; at best then it cannot be said with certainty that tuition tax credits will benefit anyone other than the middle and upper class. A time of fiscal austerity is no time to begin a program whose benefits are not demonstrated.

The right of a parent to send his or her child to a nonpublic school is constitutionally protected, but this does not mean the Government must subsidize that right.

I will not go into the argument that we make about the harm that is done to public education, which is in our formal statement.

Finally, however, because nonpublic schools are overwhelmingly sectarian, tuition tax credits violate the first amendment. The Supreme Court has spoken with a clear voice in its disapproval of tuition tax credits in 1973.

I should mention, to clarify the record, that the eighth circuit did come down with a decision in *Mueller* vs. *Allen*. It was decided, if my recollection is correct, on May 30. And I have been advised that the plaintiffs in that case will either file a petition for certiorari, within the next couple of days, or seek an extension within the next couple of days.

Senator PACKWOOD. I would assume not only will they, but I just finished reading the case a little earlier this morning, and you have got a direct conflict with another circuit.

Mr. DERSHOWITZ. That is correct. The decision in the *Norberg* case is in direct conflict, and the Mueller court has said, in its opinion, that it disagrees with the first circuit. So a cert. petition will be filed.

If I may take just 1 minute to answer two arguments that are frequently made. The first is that there is no difference between tax deductions for gifts to religious organizations or religious schools. This contention really doesn't withstand scrutiny. A tax credit for tuition contrasts with a charitable donation for which no services are given. A payment for tuition expenses is simply a purchase of a service, and therefore not a "donation." The two payments are, thus, not comparable for either tax or constitutional purposes and I think are properly treated differently.

The situation, I think, is identical to a donation to a museum, which is deductible; but the purchase of a lithograph in a book store is certainly not deductible, it is the purchase of an item, and therefore cannot be taken as a deduction.

The Internal Revenue Service has drawn a similar distinction under which parents would be denied tax deductions for gifts they are required to make to a church if their children are students in the tuition-free school operated by the church.

I would also like to respond to the argument that States and local government in the early 19th century, in the wake of the adoption of the first amendment, gave financial support to church schools, and that therefore such aid does not violate the first amendment. I think there are a number of answers to that. The first is that the religion clause of the first amendment was simply not applicable to the States during the period of time of the adoption of the first amendment.

Senator PACKWOOD. But doesn't it clearly indicate, however, that the founders of this Constitution had no personal objection to public money being given to churches to run schools?

Mr. DERSHOWITZ. There were no public schools at that time.

Senator PACKWOOD. That is correct.

Mr. DERSHOWITZ. So the only education that was available, at least——

Senator PACKWOOD. But what I mean is, in their minds they saw nothing unconstitutional about public money being given to a church to run a school.

Mr. DERSHOWITZ. But I think you have to look at that with two thoughts in mind. The first is that the Founding Fathers, in articulating the first amendment, were articulating broad principles, and its application to specific factors isn't necessarily a demonstration of what those principles are. For example, if I were today arguing *Brown* v. *Board of Education*, or *Bakke*, I would not seek the meaning of the 14th amendment by looking at what the Southern States did shortly after the adoption of the 14th amendment. It does not demonstrate the point. And I think that is the argument that is being made.

Senator PACKWOOD. Can we agree, then, on this factual statement: The overwhelming bulk of the schools to which children went, if they went to school at all at the time of the founding of this country, were private schools, almost always religious, and almost uniformly receiving some forms of public subsidy?

Mr. DERSHOWITZ. They were certainly not receiving, however, Federal grants of funds, and federal grants is what the Constitution precluded.

Senator PACKWOOD. I understand that. As a matter of fact, the Federal Government wasn't funding any public schools at that time, either.

Mr. DERSHOWITZ. There were no public schools at that time.

Senator PACKWOOD. That's right.

The reason I ask you this, Mr. Dershowitz, is that people come up here and talk about public education being the backbone of democracy in our country, with a bill on public education. Our country was founded on private, sectarian religion as far as the schools were concerned. I am not going to argue whether that makes this bill constitutional or unconstitutional, but at least factually we agree that is the nature of the schools that existed at the time.

Mr. DERSHOWITZ. I think there are serious arguments. I know Senator Moynihan makes that argument, but there are historians who disagree with that. They look at the New England States, and they see a different development than the arguments that Senator Moynihan makes.

But, finally, on that, I think it is important to note that even without the Supreme Court cases the States stopped financing parochial schools during the middle of the 19th century; so that it is a perversion of logic to suggest that it was the Supreme Court in 1947 which went in the wrong direction.

If one wants to look at the States, it is clear that the States stopped that practice a hundred years before the Supreme Court ordered it stopped.

My hope would be, Senator, that for each of these reasons the Committee rejects the present proposal on tuition tax credits, and I will certainly be available to answer questions.

[The prepared statements of the previous panel follow:]

STATEMENT OF MOST REV. JAMES P. LYKE, AUXILIARY BISHOP OF CLEVELAND

Mr. Chairman, members of the committee, my name is Bishop James P. Lyke I am the Auxiliary Bishop of the Catholic Diocese of Cleveland, Ohio, and Vicar of the Urban Region (City of Cleveland). Today, however, I am representing the Catholic Bishops of the United States as a member of the United States Catholic Conference. I speak today on the subject of tuition tax credits from personal history. When in 1949 my family moved to a federal housing project on Chicago's South Side, my mother initially enrolled me in the nearby public school. However, due to the overcrowded conditions of the school and what was perceived as a lack of discipline and poor education, my mother transferred me to the nearby Catholic school. When I enrolled in that school of 300 children, I was one of 5 black pupils. Because my mother was on welfare, she washed the church laundry in order to pay my tuition and fees. Later, with the help of my sister and part time employment at a grocery store, I attended St. Phillip Benizi High School for one year. After that, I entered my studies for the priesthood. With this backdrop, Mr. Chairman, I would like to proceed with the following remarks in favor of tuition tax credits.

On June 4, 1981 I testified before the Subcommittee on Taxation and Debt Management of this committee in favor of the tuition tax credit legislation sponsored by Senators Packwood and Moynihan. I shall not repeat what I said but many of the points I made also apply to the Educational Opportunity and

Equity Act of 1982 -- S.2673. Therefore, my comments this morning should be considered in the context of my earlier testimony.

Over the years, representatives of the United States Catholic Conference have testified before the committees of Congress on many issues -- for example, right to life, human rights in both the domestic and international arena, civil rights, and support for public education programs. I myself have testified on tuition tax credits and on low income housing. One essential element underlies the Catholic Church's position on all these issues and others. That element is the undeniable, irrevocable dignity of the individual -- a dignity whose recognition and respect absolutely _must_ be the cornerstone of _all_ public policy in this country. As I said in my testimony on low income housing before the Subcommittee on Housing and Community Development in March:

> The Church's concern for housing stems from the belief that each individual possesses an inherent dignity because he or she is created in the image and likeness of God. Each person should have the opportunity to grow and develop his or her potential to the fullest extent possible. This development is threatened whenever social and economic forces dehumanize or degrade people.

This principle is equally applicable to tuition tax credits. If children anywhere in this country are being denied "the opportunity to grow and develop" to their fullest potential through an education best suited to their needs, merely because their family's economic status does not allow for choices in education, then they are, in effect, being "dehumanized" by the very society which should offer them hope and fulfillment.

The reality, however, is that more and more children are being denied this basic right of human dignity in the area of education. It is not within the means of public education to meet the educational, emotional, and spiritual needs of each and every child in our country. That is why we have a pluralistic system of education. But many children's needs are not being met, simply because their parents cannot afford legitimate alternate types of education. I do not claim that tuition tax credits would completely eliminate this most serious form of social injustice, but they are a step in the right direction -- a step which is within the proper purview of congressionally established public policy. We must end what amounts to a shunting aside of children's rights in education simply because of their parent's inability to afford the educational alternatives which are best for them. As I mentioned in my earlier testimony on tuition tax credits, "to be poor without educational choices is in itself a greater poverty." I ask that you remember that parents are required by law to send their children to school through certain grade levels. Parents have, therefore, not only a moral obligation to provide for their children's well-being, but also a legal obligation to provide for their education. To require parents to educate their children, but then allow their choices in education to be limited because of income is not morally right and reflects a weakness in public policy relating to education -- a weakness which this Congress should address.

Those Served Most by Tuition Tax Credits

The children who stand to gain the most from tuition tax credits are those from poor and economically disadvantaged families. The greatest concentrations of nonpublic school children are in inner-cities and urban areas. In the ten largest Catholic dioceses in the country, all located in large urban areas, the total Catholic school enrollment is 1,105,766 children. Of these, approximately 331,316 students or 30% are minority children, many from families with annual incomes of below $15,000. Nationwide, Catholic schools enroll over 3 million students, 577,000 of whom are minority students.[1]

A recent survey of inner-city minority parents with children in nonpublic schools asked them why they had chosen to send their children to such schools, despite the considerable financial burden this involved. Their response was almost unanimous: They chose such schools because they wanted a quality education that includes religious and moral values; rules and discipline; and treats their children with love and respect. Furthermore, about one third of these families are non-Catholic and fifteen percent have annual incomes of less than $5,000. They are making tremendous sacrifices to educate their children in schools which are not even of the same religious affiliation. This should carry a powerful message to public policy makers. These people are making decisions based on the needs of their children, and are deserving of their government's concern and assistance.

The Public Good

We often hear the groundless argument that tuition tax credits are not in the public interest. On this point I would like to offer a few observations. Parents of nonpublic school children (over 5 million of them) save the taxpayers of this country about $10.8 billion annually, based on a public school per pupil cost of $2,169.[2] The education of their children, particularly at other than government expense, plainly benefits our entire society. The chief goal of education in our country has been the development of an educated citizenry, fully able to participate responsibly in a democratic society. Whether children are educated in the public or private sector should not be the determining factor for the public policy. The time has come for us to be less concerned about the institutional aspects of education and more concerned about children themselves. We miss the point if we focus our attention on where the child is educated, and in what type of building, and under whose direction, while forgetting about the child himself. If a nonpublic school can offer a child an educational program best suited to that child's particular needs, then the parents deserve to have the opportunity to send their child to that school regardless of their parent's financial status. And if the government can assist the parents in that regard, then it is good public policy, and, I might add, good fiscal policy to do so.

I would also like to point out that parents of nonpublic school children have a history of support for the public schools, despite the fact that they have made a separate choice in education. The myth that tuition tax credits would lead to an erosion of support for the public schools of our country is simply unfounded. A recent Gallup Poll, assessing the public's attitudes toward public schools, found that parents with children in private schools were slightly less opposed to increasing taxes to support public schools than were parents of children in the public schools.[3] Other studies have verified that in some areas of the country which have strong nonpublic schools the support for public schools is high.[4] We must begin to look at the evidence and not listen to the myths about tuition tax credits. In so doing, the Congress and the public will recognize the public good which such credits will engender.

President Reagan's Proposal

I wish now to make several points concerning specific aspects of the President's Educational Opportunity and Equity Act of 1982. Before doing that, however, I would like to say that the United States Catholic Conference is extremely pleased that the President has submitted to Congress, as promised, legislation which makes a positive contribution to providing educational equity to many families who otherwise might not have the ability to exercise their parental rights. This is a bill which can truly strengthen families by empowering them to choose the best education for their children.

My first point is that the income limitation proposed by the President is a positive indication that the legislation is clearly intended to assist middle and lower income families. It is concern for these families which has caused the Catholic Bishops to speak so often and so forcefully on this issue. The intent of the legislation in this regard should be, and is, clear and unequivocal.

Second, the United States Catholic Conference supports the anti-discrimination provisions which would deny the benefits of tax credits for tuition payments to schools which follow proscribed racially discriminatory policies. We believe the approach of the bill to this important issue is fair and reasonable.

Third, we believe the legislation should be strengthened by two additional changes. We are firmly convinced that the inclusion of a refundability provision would assist those families who pay no federal income tax and would otherwise be excluded from receiving tuition tax credits. Although it is difficult to determine the exact number of families in this category, we believe no children should be precluded from receiving an education best suited to their needs just because they come from families whose parents do not pay federal taxes. It must be kept in mind that most of these families are the very poor who are in the most need of this help.

We also believe that tuition tax credits should be available to students at all levels of education: elementary, secondary, and higher education. While recognizing the fiscal constraints which have led the Administration to exclude higher education at present, we think the time has come for Congress and the President to act on behalf of all families in this nation, and to speak out for freedom of educational choice, particularly for the poor, at all levels of the educational process. We were particularly pleased to note that the President has not expressed any objection in principle to legislation benefiting all levels of education.

Summary

In summary, the Catholic Bishops are firmly in support of tuition tax credits which will support and enhance the right of parents to make educational choices for their children. This issue is a matter of social justice for families and for our entire society since it is an issue which directly affects the lives of children. Congressional action on this issue is long overdue. Uncounted children have not received the education of their choice simply because their families could not afford it.

Certainly Congress should insure that benefits are not provided for the costs of education in schools which discriminate. Certainly Congress must concern itself with the fiscal impacts, however minimal, that this legislation represents. But the basic issues here are the education of children and the rights of their parents. The President and Congress have the responsiblity to develop and implement public policy which recognizes and supports such values. Human dignity and rights, be it in housing, civil rights, or education, should have the highest priority for government.

Tuition tax credits protect freedom of choice in education. In so doing they recognize the dignity and rights of children and parents, regardless of economic background. There is no more compelling argument in favor of them. Congress must act on this issue, and act on it now. Thank you, Mr. Chairman, and members of the Committee.

NOTES

1. National Catholic Education Association, United States Catholic Elementary and Secondary Schools 1981-1982, Washington, D.C., pp. 15-16.

2. National Center for Education Statistics, The Condition of Education 1982 Edition, U.S. Government Printing Office, Washington, D.C., 1982, p. 62

3. Ibid., p. 64.

4. Thomas Vitullo-Martin, Catholic Inner-City Schools: The Future, Washington, D.C., United States Catholic Conference, 1979, pp. 51-52.

THE MORAL MAJORITY, INC.

TESTIMONY BY DR. RONALD S. GODWIN, VICE PRESIDENT, MORAL MAJORITY INC., ON S. 2673 - THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT BEFORE THE COMMITTEE ON FINANCE, U.S. SENATE, JULY 16, 1982.

We are pleased to have the opportunity to testify this afternoon with respect to S. 2673, the Educational Opportunity and Equity Act. As a past school principal with some fourteen years experience in both the private and public sectors, I bring to this hearing views based on both professional training and experience. With a M.S. in school administration and a Ph.D. in Educational Planning and Management, I am more than casually interested in the issue before us.

The choice between public and private education is a basic right, and it is primarily the responsibility and right of parents to see that their children's education reflects those values in which they

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themselves believe. Education should not, in my opinion, be a process of separating young students from the values which are held in the home, but rather should reinforce traditional values and beliefs. Parents then have a right and a responsibility to choose a school in which they have confidence and which they can support enthusiastically.

Therefore, freedom of choice and diversity in education should be encouraged by Congress. While public schools are an essential mainstay in our pluralistic society, private schools also claim an important niche. Private schools are free to reflect particular parental values while public schools, to a large extent, are unable to promote those same traditional values. For many parents, private schools provide vital ingredients in their children's education. However public schools in America have been treated to nearly the same priviledges as a state church. Everyone, no matter what they believe, is required to support them. Those who disagree or want something else for their children are only allowed to have access to alternative educational services after they have first paid their dues to the government educational system.

True freedom would allow parents to spend their educational dollars where they see fit, and the Educational Opportunity and Equity Act brings us closer to that ideal. Tuition tax credits only partially relieve parents of the burden of paying twice when they decide that a private school is the best choice for their child, but it is a step in the right direction.

Critics have often predicted that tuition tax credits will destroy the public school system. Listen to the words of Albert Shanker, president of the American Federation of Teachers, "They (tuition tax credits) would lead to the destruction of public education by giving parents a financial incentive to remove their children from public schools and place them in private and parochial schools."

This objection is revealing. If the present system serves our nation so well, why would a small tax credit, limited to a maximum of $500, cause students to flee the public schools in such numbers that the public schools would be destroyed?

Either the statement that the public schools would be destroyed is untrue, or there is such widespread dissatisfaction with the public schools that the only thing holding them together is the financial burden of private education.

The proponents of this view must hold the public school system in very low esteem if they truly believe that passage of this bill would lead to the demise of public education.

But, I do not believe this argument. Public schools would quickly be strengthened, not ruined, by passage of this bill. Because of the new options, parents would tend to evaluate more carefully the education that their children are receiving, and would become more involved in the educational process. Competition for academic excellence would be encouraged, and the public schools would be motivated to strive for higher academic standards. I have no doubt that the public school teachers of America would soon be enjoying higher wages and delivering a measurably better education. In fact, such open competition would benefit public schools far more than private schools in the long run.

The old axiom that monopolies lead to higher costs and poorer quality is certainly true in education today, and the saddest part of this is that the poor and underpriviledged are the ones who are hurt the most.

These are the people who need education, and who are depending on it to help them break the cycle of poverty in which they live. They lack the ability to pay any great amount in tuition at a private school, and thus are locked into the public school system, with no alternative but to have their children attend their assigned school.

Tuition tax credits would give more of these people the opportunity to attend a private school, or, should they choose to stay in the public system, give them a higher quality education which public school teachers would be forced by competition to deliver in the public schools.

For those who can already afford private schools, the credits would not mean that much, but for the bulk of private school parents, who are paying $500 to $1,000 per year in tuition, the credits would provide some relief from the double taxation burden, and a chance to choose what kind of education that they want for their children.

Many opponents of this bill are presently hiding behind the banner of fiscal responsibility. They claim that by adopting this proposal we loose massive amounts of revenue in a year in which we are attempting to balance the budget. Yet, they do not take the time to consider the fact that private schools do more than offer alternative educational choices to students and their parents. Private and parochial schools carry a significant part of providing primary and secondary education in this country, and I might add, at little or no expense to the taxpayer.

If it becomes financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance will place large and new financial burdens on the taxpayers. The cost to taxpayers of offering some relief to parents, so that they can afford to keep their children in the private schools of their choice, is modest compared to the costs that would be incurred in order to educate those same children in the public schools.

Another common argument against tuition tax credit legislation is that it would aid schools which are discriminatory and which were started for racist reasons. Moral Majority Incorporated has never and will never support any bill that perpetrates racism however subtly or indirectly! This bill insures that no tuition credits will be given to parents for payment to schools which follow racially discriminatory policies, a provision Moral Majority Incorporated supports without equivocation.

The bill clearly defines discriminatory policy as the refusal to either admit applicants or to allow students full participation in the school and its programs on account of race. In fact, this legislation contains triple anti-discrimination enforcement mechanisms for the protection of racial and ethnic minorities.

The tax credit cannot be claimed unless the school is a tax-exempt organization under section 501 (c) (3). The bill also creates a new layer of protections above and beyond the 501 (c) (3) requirement. In order for parents/students to be eligible for the credit, the schools they support must annually file with the Secretary a statement, under the penalties of perjury, that the school has not followed a racially discriminatory policy. In addition, the Attorney General of the United States, upon petition by an individual who claims to have been discriminated against by a school under a racially discriminatory policy, may seek a declaratory judgment in a United States district court in which the school is located that the school follows a racially discriminatory policy. If a final judgment is entered that the school follows a racially discriminatory policy, tuition tax credits are disallowed for the year in which the complaint is filed by the Attorney General and for two succeeding calendar years.

The Educational Opportunity and Equity Act not only protects those who have been wrongfully discriminated against for so long, but it will greatly benefit racial and ethnic minorities for years to come. Contrary to popular misconceptions, minority enrollment in private schools is significant. According to a 1979 Bureau of Census study in all United States central cities, in the standard metropolitan statistical areas, 16 percent of all private school enrollees are black. Thus Blacks and other minorities are currently well situated to take advantage of the tuition tax credits proposed in the Administration bill.

Tuition tax credits represent an idea whose time has come. The bottom line of this debate is very simple. Open competition in education is desirable and will benefit public education immeasurably. Freedom of choice should be guaranteed not stifled by the present burden of double taxation. Higher academic standards in our public schools will be enhanced, not harmed by increased freedom of choice in American education. The rights of all individuals must be upheld in a pluralistic educational society, not discriminated or regulated into oblivion. In short, tuition tax credits are supportive of the principle of educational pluralism.

I believe the Educational Opportunity and Equity Act meets all reasonable criteria. The bill will successfully encourage academic excellence in the public schools, while at the same time, guaranteeing freedom of choice to families who desire to educate their children in responsible, nonpublic schools.

Thank you again for allowing me to testify; I will be happy to answer questions and/or listen to any additional comments that committee members might care to express.

STATEMENT OF NATHAN Z. DERSHOWITZ, AMERICAN JEWISH CONGRESS

INTRODUCTION

The American Jewish Congress is a membership organization of American Jews founded in 1918 and dedicated, in part, to achieving educational opportunities for all Americans. It welcomes this opportunity to submit testimony in opposition to S. 2673, a bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition. The AJCongress believes that S. 2673 is inequitable in its effect, misdirected in its approach and unconstitutional by its very nature.

The American Jewish Congress, as a membership organization, recognizes the economic difficulties parents of nonpublic school children are experiencing as tuition costs continue to rise. However, we believe that it is in the best interest of the American Jewish community in particular, and of the American public in general to oppose tuition tax credits. The AJCongress is fully committed to private education in this country. We are also fully committed to public education. This is why we oppose tuition tax credits.

Our dual commitments may seem contradictory, and the conclusion to which they lead may seem, at first blush, illogical. But the contradiction is resolved, and the logic of our conclusion becomes clear when it is realized that the tuition tax credit scheme would ultimately harm both public and private education in our country.

Tuition tax credits undermine private, religious education because, inevitably and despite the bill's disclaimer, governmental funds always come with strings attached. And they hurt the public schools in ways outlined at length below.

Finally, because nonpublic schools are overwhelmingly sectarian, tuition tax credits are an affront to the First Amendment as interpreted by the Supreme Court. They would irreparably breach the wall separating Church and State by providing a proscribed form of public aid to parochial schools. The Supreme Court has spoken with a clear voice, a voice which is at once respectful of legislative goals and plain in its disapproval of tuition tax credits.

NONPUBLIC SCHOOLS IN AMERICA

A. The Value of Education

In advancing the argument that financial considerations should not impede the right of parents to send their children to a school of their choice, Senator Packwood has stated:

> The [tuition tax credit] bill would help Americans keep the dream of education for themselves and their children alive, but not on the terms of the Federal government, but on their independent, individual efforts. Self-determination and freedom is where the American dream began, and education is one reason it has thrived.

B. Jewish Day Schools

The Jewish commitment to religious education remains strong. The Jewish community in America maintains day schools for a large number of its children. Twenty-five percent of Jewish children who receive formal religious education are enrolled in Jewish day schools, an increase of 28 percent over a ten-year period. These schools serve the community well and AJCongress remains committed to their continued existence as a necessary and desirable assurance of Jewish continuity. These schools are presently a most important source of future professional and intellectual leaders of American Jewry. They make Jewish culture, history and religion available to children in a way which cannot be duplicated in other educational settings.

The growth and success of the Jewish day school movement stands as a monument to the value of pluralism in American education. America's pluralism permits each minority group to maintain its own integrity and identity, and contribute from its own traditions and creative forces to the mainstream of American life. The day school is one of the best ways in which the Jewish community maintains its integrity and encourages its own singular creativity.

C. Tuition Tax Credits and Their Effect on Nonpublic Schools

The American Jewish Congress, therefore, is fully aware of the value of nonpublic schools and is committed to educational pluralism. We nevertheless oppose this tuition tax credit bill because we believe that it would not lessen the burden of increasing tuition costs. It is unclear as to whether the bill would make the nonpublic schools financially accessible to those who cannot now pay the price of nonpublic education and it is equally unclear as to whether it would provide significant relief to those who are presently paying for nonpublic education. Moreover, we believe that it is not the obligation of the American public to financially support those parents who decide to send their children to diverse and often sectarian nonpublic schools through a significant restructuring of the tax credit system.

Significant studies indicate that tuition tax credits (1) may predominantly favor the wealthy, and (2) are not likely to increase the number of poor and minority students who would enroll in the nonpublic schools. Other studies, whose validity is being challenged, question these conclusions. At best, then, it cannot be said with any certainty that tuition tax credit will benefit anyone other than the wealthy. A time of fiscal austerity is no time to begin a program whose benefit is not proven.

The proposal would provide federal assistance where no proven need exists, as in the case of wealthy families whose children attend nonpublic schools. Approximately one third of the tuition tax credits would be distributed to families with incomes of over $25,000. Children from families with an income of $25,000 or more would generate a share of credits roughly twice as large as their representation in the school-age population. The most needy benefit least. Children in families with incomes of less than $5,000 would generate a share only about one-fourth as large as their representation in the school-age population.*

The tuition tax credit proposal would not open the doors of the nonpublic school to the poor. It is unlikely that significant numbers of parents who could not afford to send their children to a nonpublic school which charges $250 (the median cost of elementary education in the Northeast where 31% of nonpublic elementary schoolchildren are enrolled) would be capable of doing so after receiving a $125 tuition tax credit (a real savings of $2.40 per week received eight months after the full tuition has been paid). The poor are simply not able to match the 50% tax credit with their own funds.**

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* Current Population Survey as reproduced in the Journal of Education Finance, Vol. 5, no. 3.

** This is the conclusion of analysis provided by the Office of the Assistant Secretary for Planning and Budget of the Department of Education cf., Phi Beta Kappan, Vol. 61, no. 10, June 1980, pp. 679=81.

Religious schools understandably value their autonomy. Although the bill seeks to preclude supervision of church-related schools, there is no escape from the fact that, when the federal government legislates tax benefits, it also imposes obligations. To go no further than the bill itself, it would bar benefits to students attending schools which were not non-profit or which discriminated on the basis of race, color or national origin. The IRS would have an obligation to see that each school named in a taxpayers' return was in fact non-profit. The Attorney General would have to undertake enforcement of the anti-bias provision, a task which will involve government agencies in extensive supervision of institutions receiving government aid.

The sponsors of S. 2673 undoubtedly want to provide tax credits while avoiding government surveillance. We submit that that is not possible. And, given the chioce between the two, we believe parents who send their children to nonpublic schools prefer maintaining the schools' autonomy, despite the financial burdens they face.

TUITION CREDITS: THEIR EFFECT ON THE PUBLIC SCHOOLS

It is not our purpose to pit public education against nonpublic education. Nor do we believe that our opposition to S. 2673 expresses or implies hostility to nonpublic education. The right of a parent to send his or her child to a nonpublic school is protected by the First Amendment, Pierce v. Society of Sisters, 268 U.S. 510 (1925), and confirmed by educational wisdom. But this does not mean that government must actively support that right by offering financial incentives and benefits for its exercise. The Constitution sanctions freedom of speech, but the government does not subsidize newspapers, radio and television stations and pamphleteers. Public education in America deserves and currently receives the undivided support of the taxpaying public. That circumstance could change dramatically if tuition tax credit passed.

Public education throughout American history was designed to overcome the political, cultural and economic inequities of the disadvantaged. More positively, it was meant to instill a common commitment to a democratic and political community.

The Jews in America are particularly aware of the importance of public education. Public education is in large part responsible for the success of the American Jewish community, a community largely composed of East European immigrants who came to America in the early twentieth century in search of freedom and economic opportunities for themselves and their children. Public education has offered the same opportunities to numerous other minority communities.*

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* Moshe Davis, "Jewish Religious Life and Institutions in America," in The Jews: Their Religion and Culture, ed., L. Finkelstein, pp. 273 and 297 (1971) See also Irving Howe's The World of our Fathers, pp. 271-288 (1976) and Encyclopedia Judaica 381-466.

At best it is paradoxical, and at worst hypocritical, for advocates of tuition tax credits to nonpublic schools to support the program because of the benefits which would supposedly accrue to the public schools. The fact of the matter is that S. 2673 would not improve the public schools either by encouraging competition between the two sectors or by saving the public school system money. What the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education stated in 1970 remains true today:

> No studies ... can be cited to demonstrate the effectiveness of a "free market" concept between the public and nonpublic sectors. There are no effective links between the public and nonpublic sectors to allow for the dissemination ... of innovative techniques, so that to consider nonpublic schools as models is not valid.

In any event, the argument in favor of "competition" between the public and nonpublic schools rests on the premise that public schools are educationally inferior to private schools and would thus benefit from the competition. But this premise is itself unsound; comparing the two systems is not valid. While the public schools cannot be selective in accepting students, the nonpublic schools can. While the public schools have great difficulty in expelling a child for serious misbehavior, the nonpublic schools do not. The public schools are mandated by law to provide for the intellectually and physically handicapped; the nonpublic schools do not operate under similar restraints. In short, public schools must provide quality education for all children. Surely, public schools should learn what they can from their nonpublic counterparts. But tuition tax credits are not necessary for this result. The argument is a makeweight, masking the destructive effect of the proposal on the public school system.

The argument that tuition tax credits would actually save money for the public schools by allowing more children to transfer to nonpublic schools is similarly unsound. It has been estimated that federal aid to education now provides less than $100 per public school pupil. Since the tuition tax credit bill would allow a tax credit of 50% of the school's tuition with an ultimate ceiling of $500, it is difficult to understand how this translates into a savings. In this connection, it should be noted that tuition tax credits are being considered at a time when federal aid to public education is being sharply cut. The symbolic message of the two proposals is obvious.

In any case, it is illogical to treat any tax-credit as significantly different from an appropriation. An individual's income is taxable in an amount fixed by statute. The taxpayer pays this amount to the government so that it may serve the public interest and further the community welfare. Congress, of course, has the power to grant certain taxpayers tax credits. But when it does so, it makes the judgment that the public will be better served by financing those taxpayers to that extent -- rather than by having more money available for public projects.

The actual revenue loss would certainly exceed current estimates since it is unlikely that the ceiling would remain fixed at $500. If the bill is designed to assist parents who send their children to nonpublic schools, it follows that, as costs of nonpublic education increase, the actual ceiling itself would be increased. Moreover, if Congress now takes the unprecedented step of supporting nonpublic education in the form of tuition tax credits, parents of nonpublic school children will be encouraged to lobby Congress until the full cost of nonpublic education is borne by the government.

The Supreme Court took note of the same phenomenon in its decision condemning a tax-credit plan adopted by New York State. Speaking for the Court, Justice Powell said:

> We know from long experience with both Federal and State Governments that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies ...

Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 797 (1973).

The hidden costs of the tuition tax credit bill are likely to take their toll on more sensitively targeted federal aid programs. It is hard to imagine that billions of dollars could be lost to federal revenues without threatening other programs, particularly federal educational programs.

Finally, there are those who advance a tax equity argument in support of tuition tax credits. They claim that parents who send their children to nonpublic schools are taxed twice, once for the public schools their children do not attend and once for the nonpublic schools which they do. No claim could be more inimical to our entire system of taxation. Individuals pay taxes not for his or her child's schooling. Rather, Americans are taxed for public purposes, just as one's taxes go for police and fire protection. School taxes are paid — by corporations as well as individuals, by non-parents as well as parents -- to achieve the public objective of insuring that the next generation is adequately educated.

TUITION TAX CREDITS ARE UNCONSTITUTIONAL

Ninety -four percent of nonpublic school enrollment is sponsored by religious organizations. S.2673, therefore, raises serious constitutional questions.

Many Congressmen believe that there is no clear constitutional rule and that doubt about S.2673's constitutionally should not abort congressional efforts to serve the public good. The truth, however, is that there is no such doubt. The Supreme Court has held that tuition tax credits are unconstitutional, Committee for Public Educ. and Religious Liberty V. Nyquist, 413 U.S. 756 (1973). Accordingly, members of Congress voting for S.2673 must recognize that by casting such a vote they are supporting legislation inconsistent with the Constitition as interpreted by the Supreme Court.

The Supreme Court has recognized the importance of church-related education, Lemon v. Kurtzman, 403 U.S. 602, 625 (1971), but it has also made clear "that the interest of the public lies not so much in the continuation of aid to nonpublic schools as it does in the continued vitality of the Establishment Clause." Marburger v. Public Funds For Public Educ., 358 F. Supp. 29, 43 (N.J. 1973) summarily aff'd, 417 U.S. 961 (1974).

While the Establishment Clause does not proscribe all forms of public aid to nonpublic education, it does proscribe all forms of aid which do not satisfy the Court's well settled tripartite test:

> [T]o pass muster under the Establishment Clause the law in question first must reflect a clearly secular legislative purpose, e.g., Epperson v. Arkansas 393

> U.S. 97 (1968), second must have a primary effect that neither advances nor inhibits religion, e.g. McGowan v Maryland, 366 U.S. 420 (1968); School District of Abington Township v. Schempp, 374 U.S. 203 (1963), and, third, must avoid excessive government entanglement with religion, e.g. Walz, v. Tax Comm'm (397 U.S. 664 (1979).

In 1973, the Supreme Court invalidated New York State's tuition tax credit law as a violation of the Establishment Clause of the First Amendment. Committee for Public Education and Religious Liberty v. Nyquist, supra. The challenged New York statute gave a tuition tax credit to certain parents of private school pupils. The amount of the credit was unrelated to the amount of tuition actually paid and decreased as the amount of taxable income increased.

The Court found, of course, that the recitation of legislative purposes appended to the New York law did express a secular purpose. Id. 413 U.S. at 773. But it cautioned that "the propriety of a legislature's purpose did not immunize from further scrutiny a law which either has a primary effect that advances religion, or which fosters excesive entantlements between Church and State." Id. And, it held that the tax credit violated the "effect" test.

The Court said :

> In practical terms there would appear to be little difference, for purposes of determining whether

> such aid has the effect of advancing religion, between the tax benefit allowed (under Sections 3, 4 and 5) and the tuition grant allowed under Section 2. The qualifying parent under either program receives the same form of encouragement and reward for sending his children to nonpublic schools. The only difference is that one parent receives an actual cash payment while the other is allowed to reduce by an arbitrary amount the sum he would otherwise be obligated to pay over to the State. We see no answer to Judge Hays dissenting statement below that "[I]n both instances the money involved represents a charge made upon the State for the purpose of religious education." 350 F. Supp. at 675.

413 U.S. at 790-91 (emphasis added)

Nor, in the Court's view, was there any controlling significance in the fact that financial aid was afforded the parents of nonpublic school students and not delivered directly to the schools themselves. 413 U.S. at 780-85. Finally, the Court rejected the argument that tuition tax credits are merely an

> analagous endeavor to provide comparable benefits to all parents to schoolchildren whether enrolled in public or nonpublic schools...for it would also

> provide a basis for approving through tuition grants the complete subsidization of all religious schools on the ground that such action is necessary if the State is fully to equalize the position of parents who elect such schools - a result wholly at variance with the Establishment Clause.

413 U.S. at 782 n. 38. (emphasis in original)

We have had occasion to quote extensively from the *Nyquist* decision precisely because the statute at issue there was in many respects identical to S.2673. Like the New York scheme, S.2673 does not place any restrictions on the type of educational institution for which the tuition tax credit is claimed except as noted above. Like the New York law, S.2673 would have the primary effect of aiding and advancing religious institutions.

It has been argued that the square ruling against tax-credit legislation in the *Nyquist* case does not apply here because it dealt with a state rather than a federal statute. The First Amendment is applicable by its express terms to federal laws and only by construction via the Fourteenth Amendment to state laws. It would be anomalous indeed if it were interpreted more broadly in the latter case than in the former.

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Senator **Packwood**. Mr. Dershowitz, let's be very clear about your statement. If this was clearly constitutional you would still be opposed to the bill?

Mr. **Dershowitz**. I would still be opposed to the bill. But I think it is clearly unconstitutional, and I find it distressing that, in light of this clear Supreme Court decision on something which I can't distinguish, it is argued that maybe the bill is not.

Since 1803, in *Marbury* v. *Madison*, we have had a policy in this country that it is the Supreme Court which is the ultimate determiner of what the law is, and I think the Supreme Court has spoken firmly on this issue.

Senator **Packwood**. Well, we have what they did in *Plessy* v. *Ferguson*, too.

I just think the Court is wrong. If the Court has come to the conclusion that it is unconstitutional, I think they are wrong, and I think they will one day change.

Mr. **Dershowitz**. Well, that's a possibility, and there are methods for suggesting changes in cases where the Court acts improperly—one is to convince them by a better brief.

Senator **Packwood**. Yes, but they have to have a case.

Mr. **Dershowitz**. Well, but to suggest that therefore what one should do is pass a knowingly unconstitutional law in order to set up a test case is a serious threat to our system of checks and balances. What you are doing is, you are saying, "Every time you are wrong, we will allocate funds to see if you are serious." There are more appropriate methods of amending the Constitution, and there are methods of suggesting to the Court that they ought to change their view as to what the law is.

I don't suggest, though, passing knowingly unconstitutional laws in the hope that by constantly giving the Court cases you will finally either find the right court or whittle down their view on their position. I just don't think that is the appropriate way to proceed.

Senator **Packwood**. If I was a better lawyer, I would feel more confident; but I am not convinced this is patently unconstitutional. I think there is genuine argument—constitutional argument—and I frankly find that everyone that is seriously against this is not against it principally because it is unconstitutional. Their reasons go deeper and are much more diverse.

Mr. **Dershowitz**. Well, that's because our principles of constitutionality are based upon other reasons. And to suggest simply that constitutionality is a legalistic concept without the reasons for the constitutionality, I think it ignores what the real argument is. It is unconstitutional because it is an inappropriate policy, and inconsistent with our first amendment.

Senator **Packwood**. Let's rephrase it. Let's say that the Supreme Court affirms the Minnesota case. The basic difference there is that Minnesota has included tuition for public schools. And we come back and amend this so that it is public and private tuition, making it conform with the Minnesota statute. The very same people that are here and opposed will still be back and opposed. You will not have changed a single opponent.

Mr. **Dershowitz**. Well, I think it will change the view of some people who are firmly committed to the constitutional principle.

And there is an added argument that has to be made because of its unconstitutionality and its inconsistency with the Supreme Court's ruling.

Senator **Packwood**. If refundability is added to this, do you still stick with your statement that this is basically a device for middle- and upper-income parents?

Mr. **Dershowitz**. Well, I think if refundability were added it would be a significant factor. But I was a little bit surprised at the figures that I heard this morning when a $25,000 cutoff point was used, and I understood that in a slightly different way than I think the presentation was made. I found it a little bit surprising that 46 percent or more of the people who would have the advantage of this make over $25,000. Stated that way, I think it is a different thrust than the presentation that was made earlier.

So you have a large percentage making over $25,000, and no benefit to the bottom side. If you eliminate the lack of benefit to the bottom side, it still has that problem on the top, but it's not as dramatic. It isn't as clearly a benefit to the upper middle class and the wealthy; it is still, to some extent, a benefit to the upper middle class and the wealthy so long as you have a $75,000 cap on there.

Senator **Packwood**. In Pat Moynihan's and my bill, we didn't have a cap; because, frankly, once you have gone beyond $50,000 or $60,000, the number of people that you are helping is minimal, comparatively speaking. Two, a $500 tax credit is not the factor for them as to whether or not they send their child to a private school. It's fine, and it's a help.

Mr. **Dershowitz**. But there is a lot of money involved. Senator Packwood. No, there isn't much money involved—it is interesting—when you get above that level. But, psychologically, it would deter opposition. I would be happy to put a cap on it.

I'll make you this bet: Conform it to the Minnesota statute, put in refundability, put a $25,000 cap on it, and it will not bring around a single opponent to support it.

Mr. **Dershowitz**. I hope you're right. [Laughter.]

Senator **Packwood**. Bill? Go ahead.

Senator **Bradley**. I came in just at the end of this discussion. I would like to ask Mr. Dershowitz if his primary objection to the bill is the question of constitutionality.

Mr. **Dershowitz**. I think it is fair to say I have four objections. Which is more primary than the other I am not quite sure of, but they are: First, the constitutionality, and second, the fact that I think it will impact upon religious schools—to my mind that is very significant. It was only because of the none-receipt of funds that the Hebrew Day Schools were able to argue—when the Internal Revenue Service was seeking to expand its definition of "affirmative action" in such a way as to require scholarships for certain schools and change the curriculum within the schools—and say "We get no money from the Federal Government, therefore we can run the schools the way we want to." I think that's an important element here. I think once there is Federal money given directly or indirectly, once there is Federal money there is control. And I don't want to see the Hebrew schools and the religious schools modified to conform with some policy determination that is made by the Federal Government. The Federal Government should butt out of running these schools. So that is also an important factor.

The third one is of course the public education factor. And the fourth one, which to my mind is not as significant, is the budgetary factor; I think that's primarily a matter of timing. I think at the present time it is grossly inappropriate to, on the one hand, take away money that goes to public education, and at the same time, give comparable amounts to the private sector.

So for those four reasons I object to it. Senator Bradley. How confident are you of the public education argument, that this will somehow or another hurt the public education? Also, is the Minnesota experience important facts in your consideration?

Mr. **Dershowitz**. Well, I think it will harm, for two reasons. The first one is that the private schools are not obligated to take all students. They have a greater choice. So you will end up in a situation where the public schools will have the troubled students, one way or the other, and therefore it is not a fair competition.

The argument about competition is suggesting, "We'll have competition, that is always good"; except that we know there will be a swing of students away from the public schools into the private schools.

There are two studies that suggest a relatively large percentage would move from the public schools to the private schools, or least suggest if they were not so financially hard-pressed they would.

Senator **Bradley**. What are those two studies? Mr. Dershowitz. I can give you the references. I don't have them in front of me. There is one in the Congressional Quarterly of about 2 months ago, I believe. I can provide you with a copy of that. There are two, and I think one of them suggested a study of almost—it was in the range of 20 to 30 percent of the people polled, who had children in the public schools, indicated that if there were financial benefits available by sending them over to the private schools they would consider the switch.

Senator **Bradley**. "If there were financial benefits available"?

Mr. **Dershowitz**. Tuition tax credits I view as a benefit. I would have to look at the exact wording of the poll. I am very leary of polls unless I read the exact wording, and I did read a summary of it. But there was the indication that there would be the transfer.

Senator **Bradley**. Have you probed beneath that surface? I mean, what is the thought process that takes place when one decides to move a student from a public school in which he is perfectly happy to a private school that, according to this, he has been encouraged to do because he or she will save a couple of hundred dollars in taxes? How do you weigh that against the satisfaction that one might have in the public schools?

Mr. **Dershowitz**. I can answer the question more personally than I can answer it generally, and that is, when one makes the determination as to whether to send a child to a public school or a private school, one has to weigh many different factors. The public schools where I live in lower Manhattan are in very difficult straits; therefore, the financial factor obviously enters into the picture in making the determination.

Senator **Bradley**. The financial factor? Or is it a question of where you think your child would get a better education?

Mr. **Dershowitz**. I think the answer is I would like my child to get the best education possible. It is realistic to suggest that the best education possible sometimes has a price tag to it. And, therefore, dollars do enter into the consideration of what school one will send a child to.

Senator **Bradley**. Well, let's say you are in the lower end of Manhattan, and you have a child. I don't know the schools; I am taking what you said. You said that the public are what? You characterized. I don't want to get into characterizing.

Mr. **Dershowitz**. Well, I will be very specific. The public schools that my children were eligible for, my children would have to cross what is deemed "a bombed-out area," three blocks where it is literally unsafe for my children to go; therefore, there was serious consideration. And my children were originally in a private school. When they were then eligible for the special schools in New York, I transferred them to the special schools. There was a financial cost factor that entered into the consideration.

Senator **Bradley**. It sounds to me like you put your children in the private school because to get to the public school was too dangerous, not that you had a financial benefit.

Mr. **Dershowitz**. But then, as soon as I was able to move my child to a good school—I was finding the financial drain of the private schools heavy.

Senator **Bradley**. No, but your case is the opposite. You sent your children to a private school, and then you chose to send them from a private school to a public school. Right?

Mr. **Dershowitz**. Well, I originally chose the private school.

Senator **Bradley**. Now, the question, for you to be consistent, if you had had a tax credit would you have kept them in a private school?

Mr. **Dershowitz**. I would have been able to afford it better.

Senator **Bradley**. Would you have done that, though?

Mr. **Dershowitz**. It would have entered into the equation. It certainly would have entered into the equation.

The answer is, there were many factors that entered into it. One was, could I afford it?

Senator **Bradley**. But you are a parent making a decision about a child, and obviously you are someone who has thought about the question of your children's education, and you are asserting for the committee today that the predominant consideration is whether you get a tax credit or not.

Mr. **Dershowitz**. No, I never suggested "predominant." Relevant. A factor.

Senator **Bradley**. A factor.

Mr. **Dershowitz**. It could be one of 30.

Senator **Bradley**. One of 30.

Mr. **Dershowitz**. It is still a factor.

Senator **Bradley**. And you find that fact, that you would be better if you had eliminated that factor in your consideration? Say you didn't have the consideration of a tax credit, then you would have made the decision the opposite way?

Mr. **Dershowitz**. I can't answer that question.

Senator Bradley. But I think this kind of gets to one of the real questions, this issue. I don't think anyone on this committee is interested in harming the public schools, but the assertion is made that there will be a great exodus. I will look at these studies because I am interested in that question; but I don't think, even in your personal testimony here today, you have been able to even assert to a level of probability that one could accept without question that this is indeed what would happen.

Mr. Dershowitz. That is correct. I think that is a fair statement. The suggested question asked of people, Would you move your child? is also not a fair estimate, because I think you have to look at the exact situation as it arises.

Senator Bradley. Let me go to just one other question, if I could. What do you do about your situation again—I guess we might as well stay with that. Your choice is: Do you send your child to a private school, or do you send your child to the public school, or do you move. Right?

Mr. Dershowitz. That is correct.

Senator Bradley. Now, there are those who assert that what you should do is join up with the board of education and change that school system, and that if you opt for the private school system instead of going into the public school and trying to change it that you are essentially abandoning public education. Do you agree with that?

Mr. Dershowitz. I think the answer is that it is difficult to convince parents that they should sacrifice, as they view it, or make that effort on the backs of their own children. It is a lot easier to make that effort on your own.

I think everybody should rally to increase the education provided in the public schools, regardless of whether they have children there or they don't have children there.

But I must tell you when I—because I did do that—when I tried to rally support of other parents and said, "Now, bring your children back to the schools so we can do that," the answer was, "Not with my 5-year-old, my 6-year-old, my 7-year-old, my 8-year-old. Why should I bear that burden because of the deficiency of the system?" And yet there are many people who I tried to convince to do that and was not successful.

It is a hard argument to answer. How do you tell a parent that if you—and you generalize—"If you and every one of the people in this community were to send our children to that public school, we would upgrade the school." And they said, "When? Should I risk it this year, and risk it next year, and risk it the year after?"

Senator Bradley. And did you go through that thought process yourself before you put your child in the private school?

Mr. Dershowitz. I certainly did. My problem was the physical danger. And the principal said that that child may not walk by herself through that area, and busing was not available because it was too close.

Senator Bradley. And you found that the private school was closer, or you didn't have to cross the "war zone," as you call it, and therefore you put your child into the private school?

Mr. Dershowitz. That is correct.

Senator Bradley. What if that private school was not there?

Mr. **Dershowitz**. Well, one of the choices would be, as many people do who live in Manhattan, when their children are of elementary school age, they move.

Senator **Bradley**. And what would that do to the tax base of Manhattan? Not significantly, your individual case, but what if we took your case and multiplied it by sizable numbers?

Mr. **Dershowitz**. I think if you took my case and multiplied it by all of the people who moved out, simply those I know of who moved out, when their children were of school age, even that should have an impact.

Senator **Bradley**. Should have?

Mr. **Dershowitz**. Should have. If you multiplied it by all those I don't know—but if you see all of the people who do move out, and then the influx back into Manhattan after the children graduate from school, you see that that clearly is a factor in the educational process.

I personally believe that many parents move out of Manhattan at the time when their children reach school age and then move back in after their children complete school age, because of some of the problems with the public school. I am against anything which encourages that.

Senator **Bradley**. So that the existence of the private school sector, then, keeps those people living in Manhattan? Because, in the absence of a private school, you would clearly move to the suburbs, by your own testimony.

Mr. **Dershowitz**. But there are people who make the choice. There are choices that one has to make. The choice is, you either send her to a religious school, or if you are strongly desirous of sending a child to a public school and a public school is unavailable, then you move out.

Senator **Bradley**. You see where the line of questioning is going. The line of questioning, going to the point, is: If you suddenly had a dramatic downturn in the availability of private education in urban centers, would that appreciably change the social fabric and the financial base of those cities?

Senator **Packwood**. Bill, I might ask you to conclude, if you can. We still have about 16 witnesses to go.

Senator **Bradley**. I am sorry. That is my last question.

Senator **Packwood**. Let the record show that my two children, 15 and 11, go to the neighborhood public schools, to which they are bused, in Montgomery County.

I want to read into the record here two reports from the Library of Congress. This is just a set of factual foundations. One is August 18, 1977, by Ray Salada:

> Reference is made to your inquiry of August 10, 1977, requesting information on the above matters. Specifically, you asked, (1) whether State aid to private, church-related schools was a fairly common practice in the United States at least during the first half of the 19th Century, and (2) whether such aid violated relevant Federal Constitution safeguards. The answer to these questions is Yes and No, respectively.

Then the memo goes on to elaborate.

But then, looking for a second opinion, although that one confirmed what I thought, January 31, 1978, a memo from Peter Sheridan from the Library of Congress:

In response to your request of January 30, 1978, for a memo regarding the status of schools in America from 1770 to 1820, the following generalization can be made: All or almost all of the schools during this period were private, were religious, and were publicly-supported; that is, denominational schools received public school funds. There were a few so-called "public" schools or town schools in Massachusetts, Connecticut, and New Hampshire; but even these taught the doctrine of a specific religion, in this case Congregational Calvinism.

As one educational historian wrote, describing the period from 1775 to 1820, "Public provision for religion and public support for private and church schools in some form or another, direct or indirect, explicit or implicit, were either embodied in constitutions, granted by law, or carried out in customs and practice."

Bishop Lyke, as far as the colleges are concerned I agree with you. I would like to add them. When we had them in last time, all it did was bring me more enemies than friends. The public universities came and testified in opposition to it, as did the private schools. At the time they much preferred the grant system, the basic opportunity grants, or the loans. Their attitude now might be different from what it was 2 years ago, as those programs are being pared down a bit.

What happened, it was the big fish and the little fish and the smaller fish. The more expensive private schools—it almost flies in the face of the argument of this being a rich person's bill—were afraid that tuition tax credits with limits of $250 or $500 would encourage people, rather than going to the private schools, to go to the local community colleges.

The private religious schools that are hard pressed, the small universities, were most opposed. Public universities were sort of opposed, but not so much. And initially it was supported by the community colleges. Maybe they all have perceived exactly what might happen, and the community colleges perceived what might happen.

Bishop **Lyke**. Senator, the only comment I would make is that I certainly can understand the political and economic implications and complications of all of the information you have. However, I would reaffirm and reassert the importance of educational choice, freedom in educational choice, in response to the dignity of the person. And because we base our own reflections on that, then the poor person as well as the well-to-do person should have the opportunity for that choice.

Senator **Packwood**. I can give a further reason for it, appealing to Mr. Dershowitz. If it applied to primary, secondary, vocational, college, university, and graduate schools, you would have a tuition tax credit bill that the Supreme Court has never considered before, with a very broad class of beneficiaries.

Mr. **Dershowitz**. Correct, but that doesn't mean that it hasn't considered part and held that unconstitutional.

Senator **Packwood**. No. But, just as with the *Minnesota* case, when the eighth circuit said the distinguishing factor was the addition of the public tuition—and that's one of the factors they distinguish it on—this gives you a very much broader class of beneficiaries, and the argument cannot be made that the bill is so heavily sectarian.

Mr. **Dershowitz**. Breadth, as opposed to length.

Senator **Packwood**. Yes.

Mr. **Dershowitz**. What you are suggesting is, by adding on to, elementary schools all the way through the colleges and the graduate programs, that will add breadth. What the Minnesota court was saying, it covers the parochial and people going to public schools. And I don't think that would apply.

In any event, I think the first circuit was correct and the eighth circuit was incorrect, and I hope I am proven correct.

Senator PACKWOOD. Well, we'll know soon.

Gentlemen, thank you very much.

Let's move on to David Landau, Gregory Humphrey, Julia Holmes, Grace Baisinger.

Mr. Landau, why don't you go ahead?

I appreciate the ACLU support yesterday on the discrimination in insurance bill.

STATEMENT OF DAVID LANDAU, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON, D.C.

Mr. LANDAU. We appreciate the opportunity to again testify on this subject.

The ACLU is a nonpartisan national membership organization dedicated to the preservation and enhancement of the Bill of Rights.

Mr. Chairman, you and I have been around on this before; I think we can agree to disagree. I will state our position for the record.

It is our judgment that under well-established Supreme Court precedent, S. 2673 would be a law respecting an establishment of religion and would therefore violate the first amendment. We oppose its enactment.

Like its predecessor bill, S. 550, which we commented on a year ago, S. 2673 proposes a special tax benefit for parents who send their children to private sectarian schools. We believe the first amendment was designed to prohibit this type of government aid and advancement of religion.

There is a long line of Supreme Court cases which establishs different tests for determining establishment of religion. The Supreme Court applied those tests very rigorously to the New York State tax credit plan several years ago, and it invalidated that plan. We think this proposal is constitutionally indistinguishable from the one in New York State, and it similarly would fail to pass constitutional muster.

Factually, the primary effect of S. 2673 is a direct advancement of religion. Congress can attempt to assert that this tax credit is not Federal financial assistance, as it tries to do in section 6 of the bill, and that the primary effect of the bill is not the advancement of religion, as it does in section 2 of the bill; but the facts, we believe, will lead the Court to the same conclusion that it reached in *Nyquist,* and that is that the statute is unconstitutional.

We have seen no indication since 1973 that the Supreme Court has retreated from *Nyquist,* nor has given any indication at all that it intends to retreat from the *Nyquist* decision. The *Nyquist* decision has been recognized by the lower Federal courts, with the exception of the recent eighth circuit opinion in *Mueller* v. *Allen.* In that case, the Minnesota Civil Liberties Union will be filing a petition for certiorari in the next several weeks.

Senator **Packwood**. You weren't a party to the court of appeals case, were you?

Mr. **Landau**. Not the party, but the counsel.

Senator **Packwood**. You had Leo Pfeffer there, at least there was an amicus curiae brief filed by him. I didn't see an ACLU brief filed, per se.

Mr. **Landau**. In the eighth circuit?

Senator **Packwood**. Yes.

Mr. **Landau**. Well, the petition for certiorari, is being prepared. We are assisting in preparing that in our New York office. And, of course, we were the original plaintiffs years ago when the whole issue started back in the early 1970's.

We believe that the tuition tax credit schemes that have been struck down in New Jersey by the third circuit and in Rhode Island by the first circuit are the ones that are similar to the proposed one in S. 2673 in the way they reach private, sectarian schools. In each of those cases the courts examined the facts and found that the primary effect of the aid was to sectarian and religious institutions.

We urge Congress to reject S. 2673 and reject tax benefits for private religious schools.

Senator **Packwood**. If the tuition tax credits were constitutional, what would be your position?

Mr. **Landau**. Are you saying if the Supreme Court held they were constitutional?

Senator **Packwood**. Yes.

Mr. **Landau**. We would say the Supreme Court was wrong.

Senator **Packwood**. I understand that. That's what we all say when they don't agree with us.

Mr. **Landau**. We would still oppose it on that basis, because it violates the principles of the first amendment, regardless of what the Supreme Court did with it.

Senator **Packwood**. Yours is the only testimony here today that is solely constitutional. There are no arguments about income levels, or anything else. Yours is very clearly on that issue alone.

Mr. **Landau**. That is correct.

Mr. Chairman, I would add I would be happy to comment on the antidiscrimination provisions, although it is not in my statement, if we have time. We feel that they are inadequate.

Senator **Packwood**. I do, too.

Mr. **Landau**. And particularly in light of the administration's position in the *Bob Jones* case.

Senator **Packwood**. Well, I will tell you what I have been doing. Because I have done this battle so long, I am simply not prepared to go ahead unless the administration is serious. And if they are serious—there is a difference between support and pushing for something. If they want to push this as hard as AWAX, then I will sit down and work out a satisfactory antidiscrimination provision. I will be calling you up for advice, and I will try to get the refundability into it, because I think both of them will make it a better bill. But I am not even going to rise to that level if it is just going to be another useless exercise in pushing this bill, anyway.

But I will do it, if they are serious about calling up some people and bringing some pressure, and cajoling, and persuading; that's fine.

Mr. Humphrey, go right ahead.

STATEMENT OF GREGORY A. HUMPHREY, DIRECTOR, LEGISLATION DEPARTMENT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, WASHINGTON, D.C.

Mr. **Humphrey**. Thank you, Mr. Chairman.

I am here representing the American Federation of Teachers, an organization of 580,000 teachers, paraprofessionals, professors, people who work in education at all levels.

We strongly oppose the enactment of any tuition tax credit bill. We believe that tuition tax credits would cause irreparable harm to our system of free public education. They would encourage divisive forces in our society and lead to a system of educational finance that would work to the detriment of the vast majority of American children and their parents.

No one should be fooled by the fact that the initial tax credit is a small one. A statement was made in the previous panel regarding an assertion by the president of my union that tuition tax credits would cause an outflow of students from the public schools to the private schools. What people fail to report is the other part of that equation; that is, that tuition tax credits are not just a small contribution made by the Federal Government to equalize educational expenditures made by the parents of children who attend private schools. They are only the first step in a massive open-ended entitlement of the kind that the Congress and the President otherwise seem to find so objectionable. And it will become a method for causing irreparable harm to public schools for several reasons:

The first is that the $500 provided by the Federal Government will quickly, if it is ruled constitutional and permissible, be matched in some form or another by States who have already indicated their willingness to do this. Several States, as the testimony today has dramatically indicated, have previously passed tuition tax credit laws. Once that happens, the pressure for tuition tax credits will then move to the local level.

Just last November in the District of Columbia a tuition tax credit—because of the very size of it, I think people didn't take it that seriously—of $1,200 was proposed to be provided as an offset against taxes paid in the District of Columbia.

If tuition tax credits pass on the Federal level, you will be changing, in a way that no one can predict, the system of educational finance in the United States. And I will answer the question Senator Packwood has asked every witness; that is, if some other method of tax credits were proposed, if changes were made, would we support it? For the reasons, outlined above we would not.

Tuition tax credits are a method of educational finance that has to be taken very seriously. It is not just a matter of $500 to people who can already afford to pay private school tuitions, it is a matter of establishing beyond any shadow of doubt, a system of school finance for private schools based on tax credits. And nothing that happens in the Federal Government will stop this development once tuition tax credits are allowed. We firmly believe that, and that's what the president of our union, and many people in the education community continue to assert. It is not because we believe that the public schools are not valued by the people who use them or because we have no confidence in their ability to compete but because you will be establishing a system of educational finance tilted toward private schools, and I believe the committee should examine that.

Tuition tax credits would damage public schools for another reason, and that is that the competition would be unequal, inherently, with private schools having none of the mandates that public schools are required to observe.

I won't explore that any further—the yellow light is on—I want to get to final point; and that is, once you open up the tuition tax credit and make it available, even if the nondiscrimination language in the administration's bill is adequate, and I don't believe it is, you will open up a Pandora's box of a tuition tax credit support for all sorts of very kooky operations. You will provide tuition tax credits—for example, I can't see any reason why the People's Temple in San Fransisco would not have been eligible for a tuition tax credit.

Senator **PACKWOOD**. I will tell you. We just finished limiting it to those schools—didn't we, John?—that are certified by the States.

Mr. **HUMPHREY**. Many States do not certify private schools in any way. They take hands off. In fact, there is litigation moving that is backing States even farther from that.

I have many other points in the testimony, Mr. Chairman, but thank you for the opportunity. I realize time is short.

Senator **PACKWOOD**. Thank you.

Ms. Holmes?

STATEMENT OF JULIA HOLMES, ACTION DIRECTOR, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, WASHINGTON, D.C.

Ms. **HOLMES**. Mr. Chairman, I will give you a brief summary of my testimony.

I am Julia Holmes, action director of the League of Women Voters of the United States. I am pleased to present the views of the league on "The Educational Opportunity and Equity Act of 1982."

The League of Women Voters of the United States, a nonpartisan citizen organization, has members in all 50 States as well as the District of Columbia, Puerto Rico, and the Virgin Islands.

The league has opposed tuition tax credits since 1978, based on a two-pronged league position: Support of equal access to education, and support for desegration as a means of promoting equal access to education.

I would like to explain the league's opposition to tuition tax credits. Our foremost concern stems from our support of equal access to education, and we believe that tuition tax credits will undermine our Nation's commitment to public education.

Yet, with our country facing such dire economic conditions, the budgetary implications of tuition tax credits make it an even more ill-conceived idea. We find it incomprehensible that at the same time the administation is cutting aid to public education, it is advocating a program that will primarily benefit middle- and upper-income families while imposing a multibillion dollar drain on the Treasury by 1987. Tuition tax credits would take away greatly needed moneys that should be spent on public education. The league believes they are massive tax expenditure this Nation cannot afford. The public policy implications of tuition tax credits are as far reaching as the budgetary implications.

First, we believe that tuition tax credits would undermine America's traditional system of tuition free, universal public education. Our public schools must bear the special burden of educating all, including those children who are handicapped, have discipline problems, or who may be otherwise difficult or expensive to educate. Private schools, on the other hand, are under no obligation to admit these children.

Tuition tax credits would also create an educational caste system. Given the expense of a private school education, this current proposal would provide only for a partial reimbursement for tuition costs. Therefore, most low-income families would still not be able to afford to send their children to private schools, leaving the public schools with an increasingly greater percentage of lower income students.

The league believes that the provisions in S. 2673 which would prevent high-income families from receiving the tax credit is irrevelant. Those families affected by this income ceiling could afford to send their children to private schools regardless of whether or not a tax credit was available.

The league also believes tuition tax credits are inconsistent with our Nation's commitment to promote school desegration. In many communities "segregation academies" have been established to thwart desegration and promote "white flight." Echoing the national league's concern, the Nashville, Tenn., league told us that this is "a clear demonstration of a trend that began in earnest at the time of the Nashville 1970–71 court-ordered busing for desegration. Of the 48 private schools included in the October 1980 count 40 percent of these schools have been founded since 1969. Nine of these schools have been established after implementation of the 1971 court order to integrate our public schools."

In light of the concern about the effect that tuition tax credits will have on desegregation, we acknowledge the administration's efforts to include antidiscrimination mechanisms in S. 2673. After careful examination of these provisions by the civil rights community, we were dismayed to find them vague and woefully inadequate to prevent tax relief afforded in this legislation from being used to promote racial discrimination.

The league has always supported active Federal efforts through the Internal Revenue Service regulation to deny tax-credit status to schools that participate in racially discriminatory activities.

In light of the depth of the questions raised concerning antidiscrimination provisions in S. 2673, the league seriously questions the effectiveness and usefulness of these provisions.

To summarize, the League of Women Voters is opposed to tuition tax credits because: They would inhibit equal access to education for all students; they would create an educational caste system;

they would cripple efforts to achieve school desegration; and they are a massive tax expenditure our Nation should not assume.

Senator **Packwood**. Let me assure you, also, as far as I am concerned, if the bill comes out and it does not have what I hope you and Mr. Landau and others would regard as satisfactory antidiscrimination provisions, I am not going to support it. And that is a quid pro quo for me on this. Period. I won't. And I think there is a way to write into a bill satisfactory protections.

I agree with you. I don't think they are in the bill at the moment.

Mrs. Baisinger?

STATEMENT OF MRS. GRACE BAISINGER, CHAIRPERSON, NATIONAL COALITION FOR PUBLIC EDUCATION, WASHINGTON, D.C.

Mrs. **Baisinger**. Thank you, Mr. Chairman. I am Grace Baisinger, chairperson of the National Coalition for Public Education, and a past president of the National PTA, and a former president of the D.C. Congress of Parents and Teachers as well as a current member of its board of directors. I am here testifying on behalf of the national coalition and am well-known to this committee.

Senator **Packwood**. As are many of the witnesses here today.

Mrs. **Baisinger**. The National Coalition for Public Education comprises 51 organizations with a combined constituency of over 70 million members unified in their efforts to oppose and defeat all tuition tax credit proposals. These organizations are representative of our Nation, devoting their efforts to a variety of causes, among them: Labor, civil rights, community improvement, education, and religion, and on the back of our letterhead you will find a partial listing of our membership.

Almost a century ago, U.S. Speaker of the House Thomas Reed would needle his opposition by beginning each House session inquiring, "Gentlemen, what outrage have we decided to perpetrate today?"

Gentlemen of the Senate—in this case, Mr. Chairman only—the outrage we are dealing with today is a tuition tax credit proposal that must not be perpetrated on the American public. The concept of S. 2673 is no more worthy of congressional approval today than were other tax credit proposals proposed in the past. S. 2673 is essentially the same ill-advised scheme.

Senator **Packwood**. Let me tell you something that will give you an incentive to be brief. I have to go vote in about 4 or 5 minutes.

Mrs. **Baisinger**. Well, if you don't interrupt me I might make it.

Senator **Packwood**. OK. But, otherwise you have to wait until we come back.

Mrs. **Baisinger**. The interruptions don't count against my time. [Laughter.]

All right. As I said, we think S. 2673 is ill advised for the same reasons that we have given the committee many times.

I would point out that in the District of Columbia, as a citizen and a voter in the District, we did take it very seriously, and we overwhelmingly defeated it by a margin of 88 to 12 percent, last fall. Where 18 percent of the children of school age are enrolled in private schools, and where 80 percent of the Catholic school enrollment is black, the tuition tax credit initiative went down in a resounding defeat in every precinct in the city--rich, poor, black, white.

Tuition tax credits have been discredited by all members of the coalition.

My testimony focuses on the economic issues, and other members of the organization testifying throughout this hearing will address the public policy concerns, the educational concerns, discrimination, and constitutional issues.

At a time when Congress has already slashed Federal aid for educational and social programs by more than 30 percent, at a time when the Federal deficit is projected to exceed $100 billion, and tax credits will add even more to that cost, at a time when Federal education cuts are being passed straight through to local school districts because many States are financially unable to pick up the losses, at a time when the administration and Congress are telling the elderly, the hungry, the disadvantaged, the unemployed, the handicapped, and the Federal worker, and those with low incomes that they must do with less, it is outrageous that while 90 percent of our children attend public schools we are meeting here today to consider a multibillion-dollar giveaway to approximately 10 percent of those students whose parents choose to send them to nonpublic schools.

The ultimate irony, of course, is that the students who need the help most will get the least. Take just one State, for example, the State of Wyoming. It suffers neither from the depressed economies of the Northeast and Midwest nor from the growth of the Southwest but comes close to typifying the financial struggles that all States are experiencing.

[Bell rings.]

Oh, you did that.

Senator PACKWOOD. He did that.

Mrs. BAISINGER. I should use my own watch. I can't believe that I only got through a page and a half.

Senator PACKWOOD. You can take another couple of minutes; but when those five bells ring I am going to go, and I do have a couple of questions I want to ask.

Mrs. BAISINGER. I think the points are well made. The cuts in education programs and social welfare programs have been so drastic.

Senator PACKWOOD. Yes, but you were opposed to this bill back in 1977 when we were increasing spending for education.

Mrs. BAISINGER. And we shall continue to be opposed to it for public policy issues, always for economic issues, because money is a finite quantity, and we think money could be better spent. And, of course, we are opposed to it on constitutional issues.

I will just comment that we think it is very ironical, too, that the bill should be entitled "The Educational Opportunity Quality Act of 1982." We heard again, through questioning by our opponents, Mr. Moynihan and yourself, concern about the refundability and other inequities in the legislation; and, certainly, the coalition is most concerned about the factor of discrimination and the lack of protection as expressed now in the bill.

Senator **Packwood**. Well, I think we are in kind of a mutual stalemate here. I think, honestly, if Pat and I don't like this bill and the discrimination provisions are such that we can't swallow them, then the bill is not going to go anyplace.

On the other hand, if we put them in and the administration doesn't like it, I suppose it still isn't going anyplace in that case, because it is going to take an effort to get this passed. We are going to have a filibuster in the Senate—I am aware of that; Senator Hollings would admit it, and he's good—and we will be on the floor for 3-4-5-6 days, in cloture petitions, and trying to get 60 votes. And I don't know where the House may be on this subject now. They were with us years ago, but I have no idea if they have changed their temper, their tune, or not.

Mrs. **Baisinger**. We are hoping that the House is looking at not only the financial and budgetary concerns but the broader philosophical issues involved in this bill. And they have been well expressed by other witnesses.

[The prepared statements of the previous panel follow:]

STATEMENT OF DAVID LANDAU, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman and Members of the Committee:

The American Civil Liberties Union appreciates the opportunity to present its views on S. 2673, a bill which provides for tax credits for parents who send their children to private schools. The ACLU is a non-partisan membership organization dedicated to the preservation and enhancement of the Bill of Rights. Throughout its history the ACLU has been concerned with the First Amendment protection for religious freedom and guarantee of separation of church and state. It is our judgment that under well-established Supreme Court precedent, S. 2673 would be a law respecting an establishment of religion and would therefore violate the First Amendment. We oppose its enactment.

Like its predecessor bill, S. 550, which we commented on a year ago, S. 2673 proposes a special tax benefit for parents who send their children to private sectarian schools. We believe the First Amendment was designed to prohibit the government from aiding and advancing religion in this way. Just as the government may not prohibit the free exercise of religion, including the rights of parents to send their children to private religious schools, Pierce v. Society of the Sisters, 268 U.S. 510 (1925), it also may not advance any particular religion, or religion in general. School District of Abington Township v. Schempp, 374 U.S. 203 (1963). The government must remain neutral on the issue of religion. Because approximately 85% of private elementary and secondary schools in this country are religiously affiliated, S. 2673, in fact, would have the direct effect of advancing religion, regardless of whether Congress states otherwise in Congressional findings. It therefore cannot be squared with the principle of neutrality toward religion embodied in the Establishment Clause of the First Amendment.

The Supreme Court has agreed with this view of tax benefits for private, religiously affiliated schools. We have attached for the record a detailed analysis of current case law in the area, which I will only briefly summarize here. Although this analysis was prepared last year, there was no action in the Supreme Court in the past term that changes our views.

The principal authority in this area is Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 657 (1973). In that case the Supreme Court invalidated New York state's tuition tax credit scheme as a violation of the Establishment Clause of the First Amendment. The Court reached this result by applying a three-prong test for determining an establishment of religion: To survive constitutional attack, the statute in question first, must reflect a clearly secular purpose; second; must have a primary effect that neither advances nor inhibits religion; and third, must avoid excessive entanglement with religion. Lemon v. Kurtzman, 403 U.S. 602 (1971).

The Court held that the primary effect of a tuition tax credit was the direct advancement of religion. Since 85% of New York's non-public schools were religiously affiliated, the tax credit represented "a charge made upon the state for the purpose of religious education," 413 U.S. at 791. The Court also noted that tuition tax credits carried grave potential for entanglement in the issue of aid to religion. 413 U.S. at 794.

There are several features of the Nyquist decision which are of particular relevance here. First, the Supreme Court stated that the label given to a statutory scheme such as "tax modification," "tax deduction" or "tax credit" was unimportant. The crucial factor was that the state had provided a special tax benefit for parents who send their children to private religious schools. S. 2673 is identical to the New York statute in this respect. Second, there was no attempt to restrict the credit to the portion of the tuition which was used exclusively for secular purposes. S. 2673 also does not limit the credit to that portion of the tuition which is used exclusively for secular purposes. Third, the fact that the credit is taken by parents is not constitutionally significant. As Justice Powell stated for the majority, "the effect of the aid is unmistakably to provide desired financial support for non-public sectarian institutions." 413 U.S. at 783.

Congress can attempt to assert that this tax credit is not federal financial assistance (Sec. 6), and that the primary effect of the bill is not the advancement of religion (Sec. 2), but the facts will lead ineluctably to Justice Powell's conclusion in Nyquist. Cf. Stone v. Graham, 449 U.S. 39, 41 (1980) (pre-eminent purpose of Kentucky statute requiring posting of Ten Commandments in public schools is religious, notwithstanding avowed secular purpose.) Finally, the entanglement concerns expressed by the court in Nyquist are greatly magnified under the federal proposal in S. 2673 because the tax credit has a far higher limit - $500 - than the New York law, which only had up to $50 for elementary school students and double that for high school students.

The Supreme Court has not retreated from the Nyquist decision, which has been widely recognized by the lower federal courts. See Public Funds for Public Schools of New Jersey v. Byrne, 590 F. 2d 514 (3d Cir. 1979), aff'd mem. 442 U.S. 907 (1979), Rhode Island Federation of Teachers v. Norberg, 630 F. 2d 855 (1st Cir. 1980), Kosydar v. Wolman, 353 F. Supp. 744 (S.D. OH. 1972), aff'd Sub nom. Grit v. Wolman, 413 U.S. 901 (1973).*/ The tuition tax credit schemes struck down in these cases are similar to the one proposed in S. 2673. In each of these cases, the courts found that facts demonstrated the primary effect of the tax benefit would flow to religious institutions. The facts in these cases are typical of the nation as whole. It is inescapable that the national tuition tax plan in S. 2673 would have the same primary effect.

We believe the case law in this area to be fundamentally sound. It is rooted in the history of this nation which was formed in part to escape from the tyranny of government - advanced religion. The separation of church and state is a cornerstone of our constitutional democracy. We urge Congress to honor this constitutional principle and reject the special tax benefits for private religious schools which would be enacted by S. 2673.

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*/ Recently, a panel of the Eighth Circuit Court of Appeals upheld Minnesota's tuition tax deduction for school-related expenses both private and public. Mueller v. Allen (No. 81-1569), April 30, 1982. Plaintiffs are now petitioning the Supreme Court for review.

Thank you for the opportunity to present our views.

AMERICAN CIVIL LIBERTIES UNION

Washington Office

February 1981

MEMORANDUM

UNCONSTITUTIONALITY OF TUITION TAX CREDITS UNDER THE FIRST AMENDMENT

The issue of the constitutionality of tuition tax credits for private elementary and secondary schools[1] is a matter of settled law. In 1973, the Supreme Court invalidated New York state's tuition tax credit as a violation of the Establishment Clause of the First Amendment. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 657 (1973). This 6-3 decision means that the Supreme Court would quite clearly strike down any similar federal tuition tax credit. The Court's opinion was authored by Justice Powell and joined in by Justices Douglas, Brennan, Marshall, Stewart and Blackmun. Chief Justice Burger and Justices White and Rehnquist dissented.

The Nyquist case involved a challenge to provisions of the New York State Education and Tax Laws which provided,

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1. This memorandum concerns only the constitutionality of tuition tax credits for nonpublic elementary and secondary schools. The Supreme Court has not considered the issue of credits for private collegiate education.

inter alia, for tax benefits to parents of children attending private elementary and secondary schools in New York. [2] Under the statute, parents could subtract from their adjusted gross income a designated amount for each dependent for whom they had paid at least $50 in nonpublic school tuition.[3] The amount of the deduction was not dependent upon how much the taxpayer actually paid for nonpublic school tuition and was given in addition to any deduction to which the taxpayer was entitled for other religious or charitable contributions. There were no restrictions on the types of nonpublic institutions for which the tuition credit could be claimed. Over 85% of the nonpublic schools in New York were religiously affiliated.

The Supreme Court struck down this portion of the law.[4] The Court held that New York had enacted a law "respecting an establishment of religion" and therefore had violated the First Amendment. The Court reached this result by applying its well-established three-prong test for determining an establishment of religion: to survive constitutional attack, the law in question first, must reflect a clearly secular purpose,[5] second, must have a primary effect that neither advances nor inhibits religion,[6] and third, must avoid excessive entanglement with religion.[7]

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2. The amendment also provided for direct money grants for maintenance and repair of school facilities and equipment and for tuition reimbursements for parents whose yearly income was under $5000.

3. The state labelled the system a "tax modification" program; the plaintiffs labelled it a "tax credit"; and the Solicitor General labelled it a "deduction." The district court chose the label of "tax credit." The Supreme Court said the precise label was unimportant; the scheme clearly was a special tax benefit and this was the crucial factor.

4. The provisions on maintenance, repair and tuition reimbursement were also invalidated. 413 U.S. at 774-789.

5. Epperson v. Arkansas, 393 U.S. 97 (1968).

6. McGowan v Maryland, 366 US 420 (1961); School District of Abington Township v. Schempp, 374 U.S. 203 (1963).

7. Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971), Tilton v. Richardson, 403 U.S. 672, 678 (1971).

The New York statute did have a secular purpose. Although the state had a legitimate interest in promoting pluralism in education, the primary effect of the statute was the direct advancement of religion. Writing for the Court, Justice Powell likened the tax credit to the cash reimbursement for tuition enacted under a separate section of the law and also invalidated by the Court. Since 85% of nonpublic schools were religiously affiliated, the tax credit represented "a charge made upon the state for the purpose of religious education." 413 U.S. at 791.

There was no attempt to restrict the credit to the portion of the tuition which was used exclusively for secular purposes.[8] The credit could be taken for that portion of the tuition which went to pay the salary of the employees who maintained the school chapel or the cost of renovating classrooms in which religion is taught. Indeed, it was the function of the law to provide assistance to private schools, the majority of which were sectarian. And, even though the tax benefit went to the parents and not the schools, the purpose of the benefit was to insure that parents still have the option to send their children to religiously oriented schools. Thus "the effect of the aid is unmistakably to provide desired financial support for nonpublic sectarian institutions." 413 U.S. at 783.

The Court sharply distinguished tax exemptions for property used solely for religious purposes which had been previously upheld in Walz v. Tax Commission, 397 U.S. 664 (1970). It stated that such exemptions, which covered all property devoted to educational, charitable or religious purposes, were extended to a large and neutral class of beneficiaries. The class of organizations that benefited from them was not composed of exclusively or predominately religious institutions. Tax credits, on the other hand, would flow primarily to parents of children attending sectarian nonpublic schools. Rather than having a general tax status, tax credits are special benefits. As Justice Powell wrote, "Special tax benefits...cannot be squared with the principle of neutrality established by the decisions of the Court. To the contrary, insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to advance those religious institutions." 413 U.S. at 793.

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8. The Court noted that it would be impossible to impose upon religious institutions restrictions on use of the tuition. 413 U.S. at 714.

Finally, the Court concluded that tuition tax credits carried "grave potential" for entanglement in the issue of aid to religion. 413 U.S. at 794. Although the actual credit granted was low, the Court feared that programs would inevitably expand, and the political pressures and attendant political strife over Church-State relationships would intensify. This divisiveness should be avoided.

The proposal for federal tuition tax credits for nonpublic elementary and secondary schools is almost identical to the one struck down in Nyquist. The Packwood-Moynihan bill (S. 550) would provide a tax credit for parents who send their children to nonpublic schools. As in the New York statute, there would be no restrictions on the types of nonpublic institutions for which the credit may be claimed. Since 90% of the parents eligible for the credit would have children attending religiously affiliated schools, the proposed federal law, like the New York state law, would have the primary effect of advancing religion. It would be a special tax benefit whose purpose and inevitable effect are to aid and advance religious institutions. Nyquist, supra, 413 U.S. at 793.[9] Moreover, the entanglement concerns expressed by the Court in Nyquist are greatly magnified under the federal proposal because the tax credit has a far higher limit--$500--than the New York law which had aid up to $50 for elementary school students and double that for high school students.

The simultaneous enactment of a college tuition tax credit scheme does not save the proposal. S.550 would enact them separately and provides for severability should either be invalidated. As the United States Court Appeals for the Third Circuit recently held in invalidating New Jersey's tuition tax credit law, the benefited provisions for collegiate education do not correct the constitutional defects of credits for elementary and secondary education. Public Funds for Public Schools of New Jersey v. Byrne, 590 F2d 514, 520 (3rd Cir. 1979). This decision is consistent with other Supreme Court decisions which have recognized a distinction between college education and elementary and secondary education for the purpose of the Establishment Clause. The Court applies a stricter test for aid to nonpublic elementary and secondary schools.[10] See L. Tribe, American Constitutional Law, Secs. 14-19, 14-12 (1978)

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[9] A principal sponsor of the bill, Senator Moynihan, has conceded this crucial fact. During the 1978 Senate floor debate on this proposal, he stated in response to a queston on the primary target of the bill, "We are, first of all, talking primarily about schools which have religious affiliation." 95 Cong. Rec. S13249 (Aug. 14, 1978).

The Supreme Court has not retreated from the Nyquist decision, which has been widely recognized by the lower federal courts.[11] Under the three-prong test used in Nyquist to analyze statutes which are challenged under the Establishment Clause, any proposal for federal tuition tax credits for private elementary and secondary schools violates the Establishment Clause of the First Amendment and is therefore unconstitutional.

David E. Landau
Legislative Counsel

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10. Compare, Roemer v. Board of Public Works of Maryland, 426 U.S. 735 (1976) (upholding annual noncategorical grants to state accredited private colleges, including religiously affiliated institutions, provided that none of the state funds is utilized by an institution for sectarian purposes and that the institution does not award only seminarian degrees); and Wolman v. Walter, 433 U.S. 229 (1977) (striking down a Ohio statute supplying nonpublic elementary and secondary school students with instructional materials and equipment and field trip services).

11. The overwhelming majority of lower federal courts before and after Nyquist have declared that state statutes which provide tax benefits to parents of nonpublic school children violate the First Amendment. See Public Funds for Public Schools of New Jersey v. Byrne, 590 F.2d 514 (3d Cir. 1979) (striking down New Jersey's granting of deductions to parents of children attending nonpublic schools), Rhode Island Federation of Teachers v. Norberg, 479 F.Supp. 1364 (D.R.I. 1979) (striking down Rhode Island statute granting tax deduction limited to amount of tuition to parents of children attending both public and nonpublic schools); Kosydar v. Wolman, 353 F.supp. 744 (S.D.O. 1972) (striking down Ohio statute granting tax credits to parents who had increased expenses in excess of those borne by parents generally in securing primary and secondary schooling for their children). Contra Minnesota Civil Liberties Union v. Roemer, 452 F.Supp. 1316 (D. Minn. 1978) (upholding Minnesota statute which granted tax deductions to parents of students attending both public and private schools.)

STATEMENT OF
GREGORY A. HUMPHREY
DIRECTOR OF LEGISLATION
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
ON TUITION TAX CREDITS
BEFORE THE U.S. SENATE COMMITTEE ON FINANCE
July 16, 1982

Mr. Chairman and Members of the Committee:

The American Federation of Teachers representing more than 580,000 teachers, paraprofessionals and other educational employees strongly opposes the enactment of any tuition tax credit bill. Tuition Tax Credits would cause irreparable harm to our system of free public education. They would encourage divisive forces in our society and lead to a system of educational finance that would work to the detriment of the vast majority of American children and their parents.

Tuition Tax Credits represent a massive expenditure of public funds on behalf of 10% of the school age population whose families are on the whole, better-off economically than the population, in general.

No one should be lulled by the fact that the initial credit is a relatively small one. If the President's Tuition Tax Credit bill becomes law, it will represent only the first installment of a massive open ended entitlement program of the type the President otherwise finds so objectionabl It will also become the method for causing irreparable damage to the public schools.

Five-hundred dollars from the Federal government will be quickly matched by a number of states who have in the past enacted similar legislation. In addition, it would only be a short time before the demand for tax credits was extended to the local level as it already has been in the District of Columbia where a plan to provide a $1200 tuition tax credit was voted on last November. In short, a $500 Federal tax credit would blossom into a complete financing package for private elementary and secondary education which would undermine the financial base for our public school system and which would radically change our system of school finance for the worst. Tuition Tax Credits would undermine our methods of educational finance and result in an erosion of support for public schools.

Tuition Tax Credits would inevitably damage public schools for another reason. The competition that would be fostered between public and private education would be inherently unequal since private schools must observe none of the mandates placed on public schools. The admission policies of private schools in regards to handicapped, non-English speaking or other students with special needs are not governed by state or federal laws. Children with expensive educational or behavioral problems simply never make it past the first screening in most private schools. With tax credits paving the way, a process would begin which would allow private schools to attract those students easiest to serve. The public schools would then have the problem of serving higher and higher concentrations of students with the most difficult and expensive educational and behavioral problems. In the public mind the public schools would be seen as a dumping ground to be avoided with the aid of tax credits.

Another issue that must be addressed is that of equity. How can our Federal government even think of spending $500 per private school child when programs serving children with the greatest economic and educational needs are being slashed and eliminated by the Reagan Administration? ESEA Title I, Aid for the Economically Disadvantaged, Education for All Handicapped Children, Bilingual education and aid programs for needy college students have all come under the Reagan knife. Is is fair to even consider spending almost three times as much on each student in private schools than is being spent per public school student?

While we believe the facts clearly establish that there will never be a time when it is justified to pass a tuition tax credit bill, the current slashing and elimination of on-going education programs being carried out by the Reagan Administration makes 1982 a time when the unfairness of this proposal is most acute. To gouge public education to pay for private education is simply too much even for this Congress to bear. It is shocking to realize that while these hearings are proceeding,this same Committee is sitting to try and find a way to increase taxes by $20 billion to meet the goals of the Congressional Budget Resolution. I wonder what taxes will be raised to pay for the additional $1.2 billion in costs needed to pay for this bill when it is fully implemented.

Another simple test that a Tuition Tax Credit bill fails to pass is that of need. Last summer the Congress passed and the President signed into law the largest tax cut in our Nation's history. More than $750 billion in taxes are projected to be cut through Fiscal Year 1986. In addition, Congress has changed the rules for charitable contributions and will now allow those using the short tax form to make tax deductible gifts to non-public schools. Given the tax changes already made, there is no need to provide additional tax relief to those who use non-public schools.

Non-public school enrollments have been stable recently (some indicators are that they are actually increasing). Clearly, the survival of non-public schools are not at issue now, if in fact they ever were. There is no established need for tuition tax credits.

You should also consider the divisive effects tuition tax credits will have on our society. Tuition Tax Credits will lead to schools organized on idiological rather than educational principle as well as schools based on race, class and ethnic background. They will foster or support the creation of schools run by extremists. We can expect our tax dollars will be used to pay for schools run by cults such as the Moonies or by political extremists of the right and left whose contribution to a stable democratic society has not been established. In doing this service to the aforementioned groups, you will damage an institution whose contribution to our country is second to none.

Tuitions paid to schools run by the Reverened Jim Jones and the People's Temple would have qualified for a tuition tax credit under the bills pending in Congress. Here was a group that was integrated by race, opposed to discrimination, identified as a legitimate religion--they had all the surface markings of a legitimate organization. This could have been a group meeting the standards found in the bills before this Committee. It is easy to see how tuition tax credits will finance the expansion of schools run by extremists. It is also necessary to point out that the so-called safeguards in the President's bill amount to little more than smoke and mirrors. If anything it offers even less civil rights protections than other proposals heard by this Committee.

Tuition Tax Credits fail to meet the necessary tests that should be given to any piece of proposed legislation. They will damage a vital productive institution, public education, they will lead to divisions in our society and there is no demonstrated need for the proposed expenditure of the funds. They are also a roll of the dice. Once the public school system is harmed by tuition tax credits, there will be no way to put things back in working order and the educational opportunities of millions of children will be diminished.

We realize that this Committee does not have jurisdiction over education legislation, but you have before you legislation that will have a profound effect on the education of our Nation's children not just a tax relief measure.

Thank you.

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League of Women Voters of the United States • 1730 M Street, N.W., Washington, D.C. 20036 Tel. (202) 296-1770

TESTIMONY

BEFORE THE SENATE FINANCE COMMITTEE

ON THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982, S 2673

BY

JULIA A. HOLMES, ACTION DIRECTOR

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

JULY 16, 1982

Mr. Chairman, members of the Committee, I am Julia Holmes, Action Director of the League of Women Voters of the United States. I am pleased to present the views of the League on "The Educational Opportunity and Equity Act of 1982," S 2673.

The League of Women Voters of the United States, a non-partisan citizen organization, has members in all 50 states as well as the District of Columbia, Puerto Rico and the Virgin Islands.

The League has opposed tuition tax credits since 1978, when the League national Convention, consisting of over 2000 League leaders from across the country, directed the national board to oppose tax credits for families of children attending non-public elementary and secondary schools. Convention action was based on a two-pronged League position: support of equal access to education and support for desegregation as a means of promoting equal access to education.

The League reaffirmed this commitment by designating opposition to tuition tax credits as one of its action priorities for 1982. In support of this action priority, League members across the country are writing letters to their members of Congress opposing tuition tax credits; meeting with members of Congress to discuss the issue and organizing local educational campaigns on tuition tax credits.

The LWVUS has held a position in support of equal access to education since the early sixties, and has promoted it at both the national and local levels through a variety of efforts. The League has supported a wide variety of federal programs enacted during the past two decades aimed at meeting the educational needs of the poor and minorities. Nearly every state League has studied the issue of school finance and is involved in identifying inequities in the ways in which schools are funded.

We have also worked for a strong federal civil rights enforcement role, including support for busing as an option for implementing school desegregation. Local League efforts in support of peaceful school desegregation have been constant and tireless -- including everything from filing court suits, establishing community coalitions, and running rumor control centers.

Before I begin my discussion of the League's position on tuition tax credits, I want to take this opportunity to tell you of our support for the Senate Concurrent Resolution 103. Leagues all across the country are circulating petitions in support of this resolution because it reaffirms our nation's commitment to public education and stresses the importance of such a system to the future social and economic goals of our country. And, based on this commitment to public education, the Resolution calls for opposition to tuition tax credits.

I would like to outline the reasons why the League is adamantly opposed to tuition tax credits. As stated earlier, the League's fundamental opposition to tuition tax credits stems from our support of equal access to education and our concern that tuition tax credits would undermine our nation's commitment to public education. This concern is still foremost in the League's mind. Yet with our country facing such dire economic conditions, the budgetary implications of tuition tax credits make it an even more ill conceived idea.

In 1983, the national deficit will exceed $100 million. In an effort to reduce the deficit the Administration has proposed massive cuts in social programs, including a 25% reduction in federal aid to education. It is inconceivable that at the same time the Administration is cutting aid to public education, it is advocating a program that will primarily benefit middle and upper income families while imposing a $1.7 billion or more drain on the Treasury by 1987. As set forth in S 2673, the tuition tax credits plan would add nearly $4 billion to $5 billion to an already swollen budget deficit. In an era of battling economic erosion, the League believes it is senseless to advocate such a costly plan.

Another economic argument against tuition tax credits is that the proposed credits would be in the form of non-stimulating credits, that is, credits that do not in turn generate revenues. This is a massive amount of lost revenues -- approximately one-third of all funds provided by the federal government to support public education in our country. Tuition tax credits would become expensive and uncontrollable. The end result would be the addition of another large, inflationary item in the federal budget that our country cannot afford.

Furthermore, the federal government is already providing financial support to private schools. While the federal government's annual contribution to the public schools at present amounts to $160 per student, the federal government also contributes to private schools -- at least $58 for each private school student -- through existing education programs, such as school lunch, transportation, and aid to disadvantaged children. In addition, the tax-exempt status of many private schools already gives them the equivalent of a considerable federal financial contribution.

Tuition tax credits would take away greatly needed monies that should be spent on public education. The League believes they are a massive tax expenditure this nation cannot afford. Measured against severe budgetary restraints, tuition tax credits are an inappropriate idea. Examination of the public policy implications of such a plan further substiantiates that claim.

First, we believe that tuition tax credits would undermine America's traditional system of tuition-free, universal public education. Providing such an educational system has long been the cornerstone of our American democracy. Our public schools open their doors to all types of students and serve a vital socializing process. In performing this role, our public schools must bear the special burden of educating all, including those children who are handicapped, have discipline problems, or may be otherwise difficult or expensive to educate. Private schools, on the other hand, are under no such obligation to admit these children. For example, in Iowa the public schools have been leaders in providing special education for handicapped and disabled children. The Iowa League of Women Voters has told us that:

> Iowa's special education program works because of the great heterogenity of the public schools' population. Tuition tax credits would encourage parents to enroll their children in private schools, thus, leaving the public schools with a disproportionate number of children the private schools would not accept--those with learning disabilities, physical handicaps and emotional problems.

Tuition tax credits also would create an educational caste system. Since tuition tax credits would be a reimbursement of tuition costs, they would encourage middle and upper middle income families to enroll their children in private schools. The Administration's proposal would allow an individual to take a tax credit equal to 50% of the educational expenses paid by him/her during one year up to a maximum amount of $100 per student in 1983 to a maximum credit of $500 in 1985. Given the expense of a private school education, this current proposal would provide only a partial reimbursement for tuition costs. Therefore, most low-income families would still not be able to afford to send their children to private schools, leaving the public schools with an increasingly larger percentage of lower income students.

A case in point is Nashville, Tennessee where the number of needy children in public schools is growing. The LWV of Nashville reports that:

> During 1970-71, 16% of the students in Nashville's public schools were eligible for the free lunch program. By 1980-81, 44% of the public school students were eligible. Clearly, those who will not benefit from tuition tax credits are a growing proportion of the school population.

In an attempt to target the tax credits, S 2673 contains a provision to phase out tax credits for families with incomes of more than $50,000 a year and to make families with incomes above $75,000 ineligible for the credit. Even though this plan would prevent high income families from receiving the tax credits, the League believes this provision is irrevelant. Those families affected by this income ceiling could afford to send their children to private schools regardless of whether or not a tax credit was available.

Tuition tax credits would then be a federal subsidy created to provide assistance for the parents of a small percentage of the nation's students, only 11.3% of the total student population, including many of the most economically advantaged students in the country.

Third, the League believes tuition tax credits are inconsistent with our nation's commitment to promote school desegregation. Tuition tax credits would have a particularly disastrous impact on public schools in desegregated school districts to the detriment of a strong integrated education system. In many communities "segregation academies" have been established to thwart desegregation and promote "white flight." Moreover, Congress has repeatedly hampered whatever efforts the Internal Revenue Service has made to deny tax-exempt status to such racially discriminatory private schools. Therefore, tax benefits are flowing to these schools. We are appalled to think that the Congress would further promote financial support of such institutions. There is growing evidence in a number of desegregated school districts that white flight has stabilized or declined, but establishment of tuition tax credits would erode the efforts of parents and community organizations to establish quality integrated education. Echoing the national League's concern that tuition tax credits would erode much of the positive gains public schools have made toward desegregation, the Nashville, Tennessee LWV contends:

> ...that the tax subsidy is a powerful incentive for parents to leave the public schools. Nashville made considerable progress in implementing desegregation. Initially there was considerable "white flight" but enrollments have now stabilized. In October 1980 private school enrollment was 14,882 while the public school enrollment steadied at 68,000. Thus, Nashville's 20%-plus private school enrollment is almost double the national average. This is a clear demonstration of a trend which began in earnest at the time of Nashville's 1970-71 court-ordered busing for desegregation. Of the 43 private schools included in the October 1980 count, 40% of these schools have been founded since 1969. Nine of these schools have been established after implementation of the 1971 court order to integrate our public schools.

In light of the League's concern about the effect tuition tax credits will have on desegregation, we acknowledge the Administration's efforts to include anti-discrimination mechanisms in S 2673. After careful examination of these provisions by the civil rights community, we were dismayed to find them vague and woefully inadequate to prevent tax relief afforded in this legislation from being used to promote racial discrimination.

First, the League has always supported active federal efforts through the Internal Revenue Service (IRS) regulation to deny tax-exempt status to schools that participate in racially discriminatory activities. Under proposed S 7408 of the Internal Revenue Code which has been added as part of this bill, the IRS involvement in discrimination cases would be greatly limited. Under this section the Attorney General may file a suit only upon request of the person who allegedly was discriminated against. In essence, if the IRS has denied an application for tax-exemption, or has begun administrative proceedings to revoke a previously granted exemption because of racial discrimination, the IRS may not refer the matter to the Attorney General for the filing of a declaratory judgment lawsuit. Hence, as set forth in this bill, the general prohibition against third-party complaints to the Attorney General extends even to other agencies of the federal government. The League believes such a practice would severely restrict the initiation of litigation against schools that have already been determined to have engaged in racially discriminatory practices and inhibit the IRS from carrying out its constitutional authority.

Civil rights provisions in the bill also change the definition of who can bring discrimination charges. Traditionally, the IRS has been responsible for investigating discrimination claims on behalf of individuals or groups against schools. In a reversal of this position, S 2673 requires the individuals who believe they have been discriminated against to petition the Attorney General within six months of the alleged act. The League believes this is a major step backward in civil rights enforcement in that it shifts the burden of proof from the suspect schools to individual complainant. Such a requirement forces the alleged victim to bear a monetary and time-consuming burden to protect his/her rights.

Another concern of the League focuses on the Attorney General's enforcement discretion. After receipt of a complaint petition, the Attorney General is free to discuss the allegations with the school in unsworn, out-of-court meetings or correspondence. The bill does not provide any specific role for the complainant in these negotiations or in subsequent judicial proceedings. The League feels this is a blatant violation of an individual's due process rights. The League has long been commited to open government and an informed citizenry. If individuals file a complaint with the federal government, the League believes they have a right to know what information is being exchanged between the involved parties.

The concept of requiring schools to sign a sworn statement claiming they are not discriminating also raises questions as to the effectiveness of the civil rights provisions in the bill. In the past, pain of perjury or fines has not been enough of a deterrent to make such action work properly. And, the management structure of private schools makes this matter more complicated because the person signing the statement may not be aware of practices of other school staff. For example, if the board of directors signs the statement swearing that no racially discriminatory practices exist in their school, can individuals on the school's administrative staff be prosecuted because they have engaged in disciminatory practices? S 2673 provides no clear answer to that question.

In light of the depth of questions raised concerning the anti-discrimination provisions in S 2673, the League seriously questions the effectiveness and usefulness of these provisions.

As I have stated, the League believes tuition tax credits have adverse budgetary, public policy and civil rights implications.

In conclusion, the League of Women Voters is opposed to tuition tax credits because: they would inhibit equal access to education for all students; they would create an educational caste system; they would cripple efforts to achieve school desegregation; and they are a massive tax expenditure our nation should not assume.

The National
Coalition for
Public Education

Chairperson
Mrs. Grace Baisinger
National PTA

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STATEMENT OF THE NATIONAL COALITION FOR PUBLIC EDUCATION

Mr. Chairman and members of the Senate Finance Committee. I am Grace Baisinger, Chairperson of the National Coalition for Public Education. The National Coalition for Public Education comprises 51 organizations with a combined constituency of over 70 million members unified in their efforts to oppose and defeat all tuition tax credit proposals. Almost a century ago, U.S. Speaker of the House, Thomas Reed, would needle his opposition by beginning each House session inquiring, "Gentlemen, what outrage have we decided to perpetrate today?" Gentlemen of the Senate Finance Committee, the outrage we are dealing with today is a tuition tax credit proposal that must not be perpetrated on the American public. The concept of S. 2673 is no more worthy of Congressional approval today than were other tax credit plans proposed in the past. S. 2673 is essentially the same ill-advised scheme that has been rejected by the public every single time it has been voted on over the last decade and one-half. It was overwhelmingly rejected by voters in the District of Columbia last fall by a margin of 88% to 12% and has been discredited by all members of this Coalition as being unsound economically, educationally and is in violation of the constitutional principle of separation of church and state. The President's proposal, whether it is implemented immediately or phased in over several years, is a not too subtle attempt to weaken the American public school system.

ECONOMIC ARGUMENTS

- Tuition tax credits represent a massive tax expenditure that our nation cannot afford.
- The lost revenue would be in the form of non-stimulating credits that do not generate new revenues to replace those lost through the tax credits.
- Tax credits are expensive and uncontrollable, thereby adding another large inflationary item to the federal budget.
- The basic tax credits program would invite endless escalation as tax credits and tuition push each other upward in a continuing spiral.
- Tax credits will limit fu[illegible] federal funding for public schools.
- Since tax credits will provide only partial reimbursement for private school tuitions, poor parents will be barred from participation.
- Public school parents would be taxed twice: once for public schools and a second time through the tax bonus granted for private school parents.
- Money spent on each pupil would disproportionately favor non-public schools since tax credits would allocate per-public expenditures at four times the amount of federal aid for each student in public schools.

At a time when Congress has already slashed federal aid for educational and social programs by more than 30%, at a time when the federal deficit is projected to exceed $100 billion (and tax credits will add even more to that cost), at a time when federal educational cuts are being passed straight through to local school districts because many states are financially unable to pick up the losses, at a time when the Administration and Congress are telling the elderly, the hungry, the disadvantaged, the unemployed, the handicapped and those with low incomes that they must do with less, it is outrageous we are meeting here today to consider a multi-billion dollar give away to approximately 10% of those parents who choose to send their children to non-public schools.

The ultimate irony of this, of course, is that the students who need the most help will get the least. Take just one state for example- the State of Wyoming. It suffers neither from the depressed economies of the northeast and midwest, or from the growth of the southwest, but comes close to typifying the financial struggles that all states are experiencing. Programs to be reduced over the next two years as a result of federal cuts include: Chapter I of Public Law 97-35 (Title I) - $1,766,300 or a 37% cut; Chapter II of Public Law 97-35 (Block Grants) - $460,731 or a 10% cut; Vocational Education - $498,008 or a 36% cut; Handicapped Education - $512,205 or a 24% cut; School Lunch Program - $238,694 or a 7.5% cut; and Bilingual Education - $7,745 or a 40% cut. State Superintendent of Public Instruction Lynn Simons has warned that "important programs are being jeopardized, programs for those who are least able to sustain the loss, our children. Every child in public school will be affected by these cuts, especially those who may be served by more than one of the federal programs."

Drastic reductions in current federal education programs have the effect of reducing federal funding for schools and increasing money available to non-public schools. Indeed, John Chapoton, Assistant Secretary for Tax Policy in the Department of Treasury removed all doubt about where the money was coming from to pay the high cost of tuition tax credits. "Tuition tax credits would be increased to the extent that direct student assistance programs are reduced or private school enrollments or tuitions increase." In essence, the money cut from Wyoming's federal assistance to public school students would be used to subsidize the choice of parents nationwide who choose not to use the public schools. In fact, tuition tax credits would, in effect, provide non-public schools two and one-half to five times the amount of federal support presently given to public school students.

Lastly, public money is already being allocated to non-public schools through assorted local, state and federal resources. Many primary forms of public support for non-public schools are already imbedded in tax codes and state and federal regulations:

- At state and local levels, private schools usually are exempt from property taxes on real property and improvements used for school purposes.

- Non-profit schools pay no income, use or sales taxes;
- Individuals and corporations may deduct voluntary private school contributions from federal income taxes;
- In many states, students of private education receive publically supported services and equipment, such as testing, textbooks, handicapped services and transportation. Released time and dual enrollments are also common. Pennsylvania estimates expenditures of $40 million for selected private school services, New York estimates that private school services cost about $200 million and Ohio estimates private school services at $45 million and growing.
- In all states, non public schools will have the opportunity to participate in ECIA. In many states, this will translate into more dollars for private schools. While the data for ECIA is just beginning to come, we know that Delaware private schools will get 15% in new money and New Jersey private schools will get 17% in new federal monies. We suspect this will establish a trend in other states.

Review the facts:

1. The major cost of tuition tax credits;
2. The huge projected federal deficit of over $100 billion;
3. The public monies already being appropriated to non-public schools through local, state and national sources;
4. The economic abandonment of the national government of its own public schools through dramatic spending cuts at a time when state and local governments are unable to assume or make-up the deficits;

These facts all suggest that tuition tax credits are ill-conceived, unneeded and based on a single premise - the pillage of the federal treasury. The tax credit appeal is matched only by the damage it will do to the financing of public education. At a time of overall reductions in federal money, tuition tax credits mean that non-public schools will be getting a larger share of the smaller pie. It does not make much sense to provide non-public schools with unrestricted general aid through tuition tax credits while public schools must fight for what is left.

PUBLIC POLICY ARGUMENTS

The public policy implications of tuition tax credits are as far reaching as the budgetary implications. S. 2673 would be a dramatic reversal of federal policy and a clear signal to parents that the government is abandoning the public schools (how else can one interpret what has happened to Wyoming and many other states) - and those who can afford to get out should get out while they are able.

Tuition tax credits endanger America's traditional system of tuition free public education, locally controlled, serving the needs of all children, and providing a unifying force in a diverse country. In fact, tuition tax credits may give license to a dual school system, based on student selectivity, income, religion and student achievement and without a formal mechanism for public scrutiny. For instance, S. 2673 does not assure:

I. EQUAL OPPORTUNITY FOR ALL CHILDREN

Public education policy requires that public schools admit all who appear at its doors. The public schools are obligated to provide equal education for all students regardless of ability, handicaps, language proficiency or deficiency in English. Private schools are not mandatory to accept children who are handicapped, discipline problems, or otherwise difficult to educate. In fact, only about 2.7 percent of all religious schools provide programs for the handicapped and only 3 percent of all non-public schools offer vocational education!

II. EQUAL EDUCATIONAL ACCESS FOR ALL CHILDREN

Since private schools are not required to admit all children who come to their door, tuition tax credits would result in an educational caste system segregated by caste, class and religion.

Allowing non-public schools to admit students selectively permits them also to play favorites among the nations children using race income, educational need, sex and religion as entrance criteria. Tuition tax credits give public license to this private selection process which would result in gross educational inequities and social fragmentation. Harvard professor Stephen Baily observed in a Boston Globe article December 15, 1980 that tax credits will "reestablish a blatant class system in which the wealthy and the middle class buy their way out and pay just enough taxes to keep squaled schools going in the slums. The combined impact could leave the public schools with the "welfare" basket" cases.

The National Coalition believes the non-discrimination provision of S. 2673 to be extremely weak. First, the willingness of the Congress and the administration to actively deny tax-exempt status to schools that discriminate by race is suspect. Congress has already blocked the IRS from enacting proposed regulations that would have revoked tax-exempt status of the non-public schools. And then on January 8, 1982 the President decided to end the 12 year old government policy denying tax exemptions to segregated private schools. There is obviously no political will to enforce any non-discrimination provision, including the one in S. 2673. The record speaks for itself.

Second, S. 2673 would permit students to be excluded from private schools by religion which is no surprise. Most parochial schools by their very nature sort students according to religion. Many parochial school leaders, however, do not want to be forced to admit students of other faiths, and S. 2673 would certainly permit such exclusion.

Third, the simple requirement of the past mandating that schools swear upon pain of perjury they are not discriminating has led to ineffective enforcement. Given the competing demands upon the time and resources of the United States Attorneys, it is unreasonable to expect this mechanism will ever be used.

III. A SYSTEM OF ACCOUNTABILITY AND REPRESENTATION THROUGH LOCAL BOARDS OF EDUCATION, STATE LEGISLATURES AND THE U.S. CONGRESS.

Tuition tax credits would encourage a general assistance program subsidizing private and parochial schools that are not conceived publicly, do not have to adhere equally to federal, state and local mandates, do not have totally open admissions standards and are not officially accountable publicly to anyone for the use of public dollars. It is inconceivable that the federal government could sanction a multi-billion dollar tax credit without some mechanism for ensuring that both the school and tuition charge are legitimate. But how does the federal government determine the legitimacy of a private school? By federal regulations? By requiring a state monitoring and reporting system? Further, in terms of educational quality, if federally subsidized non-public schools do not succeed, can the federal government argue caveat emptor or will elected officials be pressured to scrutinize and ultimately regulate private schools? In terms of protecting the federal treasury and the consuming public, how long could Congress promote private education without accountability, yet find that public education must adhere to rigid guidelines requiring structured accountability for the expenditure of their federally connected revenues.

The irony (or deliberate hoax) is that S. 2673 is entitled the "Educational Opportunity and Equality Act of 1982." This rhetoric and obfuscation cannot diminish what the real effects of the bill would be: separate and unequal educational systems: One public and one private, one rich and one poor, one for disadvantaged students and one for advantaged students; one having to adhere to public mandates and regulations, the other far less regulated.

CONSTITUTIONAL ARGUMENTS

- Tax credits violate the Constitutional principles of separation of church and state because religious schools would be recipients of federal aid.
- Since religious schools or parishes would be beneficiaries of tax credits, federal monies would tend to advance and foster religion at public expense.
- In order to assure tuition tax credits are used for a non-sectarian purpose, and do not advance or inhibit religion, public surveillance and monitoring on schools grounds would be necessary thereby leading to excessive entanglements.
- Legislatures and Congress should not abrogate their responsibilities to the courts. The judiciary should not be the decision makers of educational policy because they have neither the resources nor the expertise.

In 1971, the U.S. Supreme Court in Lemon vs. Kurtzman established its three pronged test for constitutionality -- a statute must (1) have a secular purpose; (2) have a primary effect that neither advances nor inhibits religion;

and (3) not lead to "excessive entanglement" of church and state. Under this test, tuition tax credits would surely violate the First Amendment's separation of church and state provision, and thereby be ruled unconstitutional. Even Administration officials have voiced reservations about the legality of tuition tax credits, but yet insist on supporting the idea.

Mr. Chairman, The National Coalition for Public Education contends that the principle of tuition tax credits does a great disservice to public education, has little to do with educational quality, subsidizes the choice of more affluent tax payers able to afford private schools, creates social and educational inequities, and diverts the most important duty of government which is to provide public education. The demand that a small minority be financially rewarded for not using free, public education, in addition to receiving exemptions from prevailing educational and social policy has no legitimate place in public thinking. The National Coalition thanks you for allowing this testimony.

The following is a partial list of Coalition members

AMERICAN ALLIANCE FOR HEALTH, PHYSICAL EDUCATION, RECREATION & DANCE (AAHPERD)
AMERICAN ASSOCIATION OF COLLEGES FOR TEACHERS EDUCATION (AACTE)
AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS (AASA)
AMERICAN CIVIL LIBERTIES UNION (ACLU)
AMERICANS FOR DEMOCRATIC ACTION (ADA)
AMERICAN ETHICAL UNION (AEU)
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME)
AMERICAN FEDERATION OF TEACHERS (AFT)
AMERICAN HUMANIST ASSOCIATION (AHA)
AMERICAN JEWISH CONGRESS (AJC)
A. PHILIP RANDOLPH (APR)
AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE (AUSCS)
AMERICAN VOCATIONAL ASSOCIATION (AVA)
BAPTIST JOINT COMMITTEE FOR PUBLIC AFFAIRS (BJCPA)
BOARD OF CHURCH & SOCIETY/UNITED METHODIST CHURCH (UMC)
CHILDREN'S DEFENSE FUND (CDF)
COUNCIL FOR EDUCATIONAL DEVELOPMENT AND RESEARCH (CEDAR)
COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO)
COUNCIL OF GREAT CITY SCHOOLS (CGCS)
LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT (LCLAA)
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES (LWV/US)
MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND (MALDEF)
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP)
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS (NASP)
NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION (NASBE)
NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION (NCCE)
NATIONAL CONGRESS OF PARENTS AND TEACHERS (National PTA)
NATIONAL COUNCIL OF JEWISH WOMEN (NCJW)
NATIONAL COUNCIL OF SENIOR CITIZENS (NCSC)
NATIONAL EDUCATION ASSOCIATION (NEA)
NATIONAL PUBLIC EDUCATION AND RELIGIOUS LIBERTY (National Pearl)
NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA)
NATIONAL SCHOOL PUBLIC RELATIONS ASSOCIATION (NSPRA)
NATIONAL SCHOOL VOLUNTEER PROGRAM (NSVP)
NATIONAL URBAN LEAGUE (NUL)
NEW YORK CITY BOARD OF EDUCATION (NYC Bd. of Ed.)
STUDENT NEA (SNEA)
UNION OF AMERICAN HEBREW CONGREGATION (UAHC)
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
UNITED STATES STUDENT ASSOCIATION (USSA)

Senator Packwood. We are going to take about a 10-minute recess while I go vote. If any other member comes, have them start. And I will be back in about 10 or 15 minutes.

[Whereupon, at 1 p.m., the hearing was recessed.]

AFTER RECESS

Senator Packwood. Gentlemen, I apologize. We had two votes back-to-back.

Now let's start off with Mr. Murren.

STATEMENT OF PHILIP J. MURREN, BALL & SKELLY, HARRISBURG, PA., ON BEHALF OF THE COMMITTEE FOR PRIVATE EDUCATION, NEW HAVEN, CONN.

Mr. Murren. Thank you, Senator.

Mr. Chairman, my name is Philip J. Murren. I am a practicing lawyer in Harrisburg, Pa., with the firm of Ball & Skelly. My appearance today is for the purpose of offering testimony on behalf of the Committee for Private Education, which is an organization composed of several constituent groups representing a total of 15.5 million parents, students, and teachers nationwide.

It may be helpful for the Senator to know that one of the first statements ever made by an American Congress on the subject of education came with the enactment of the Northwest Ordinance in 1787. In that charter for the Government of the vast Northwest Territory, the Congress stated that "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." The measure which this committee now has before it thus stands in a long American tradition of fostering educational opportunities.

Senator Packwood. As I recall, that ordinance also provided money for the paying of a priest or some other religious officials to provide some education.

Mr. Murren. I am not sure of that, Senator. It may well have.

Senator Packwood. I think so.

Mr. Murren. The parental right to choose the education best suited to the needs of their children has been constitutionally recognized, and it lies at the heart of our democratic system. It is allied to two further liberties which are also constitutionally recognized: intellectual liberty and religious liberty. This Congress furthers religious and intellectual liberty when it removes economic impediments and governmentally created tax barriers to the full realization of educational liberty. Many people of modest and moderate means find themselves without the liberty to choose nonpublic education because for them that liberty is rapidly becoming a mere paper liberty.

There is an urgent need for relief for parents who choose, and those who are presently precluded from choosing, nonpublic education. This relief can be accorded, with no harm whatsoever, to the financial well-being or the morale of public education.

As the committee is aware, the U.S. Supreme Court has never directly ruled on the question of the constitutionality of tuition tax credits. In fact, it expressly reserved that question in the 1973 *Nyquist* opinion.

The U.S. Courts of Appeals, which have considered similar questions, are in disagreement. Congress is, therefore, free to exercise its own informed judgment as to the constitutional wisdom of the measure.

We, ourselves, are convinced that Senate bill 2673 is in all respects valid. It is legislation which has the wholly secular purpose of producing an educated and virtuous citizenry, a cornerstone for the prosperity and rectitude of the Nation. It is legislation which involves only a relationship between taxpayer and tax collector, thus avoiding excessive entanglement between church and state. It is also legislation which has no primary effect of advancing religion. Tax credits do not channel moneys to religious institutions; parents are simply permitted to retain a certain portion of the money which already belongs to them because they have chosen to exercise a liberty which belongs to them.

At the same time, S. 2673 avoids unduly burdensome and unnecessary Government controls over private and religious educational institutions. Those institutions are possessed of constitutional liberties of their own, and Senate bill 2673 recognizes those liberties when it provides a fair and reasonable procedure for denial of tax relief to parents who choose to send their children to racially segregated institutions.

Only a very small percentage of private institutions in this country are set up as racial havens. S. 2673 would require any institution which wishes its patrons to be eligible for tax credits to sign an annual certification under penalties for perjury, that it is not racially discriminatory. This in itself is a powerful deterrent, enforceable by any U.S. attorney in the country; but for those schools which do discriminate in spite of the perjured statement, a court determination will establish the fact of that discrimination and the consequent ineligibility of the parents who patronize the school for tuition tax credits.

Every act of discrimination has a victim, Senator, and those victims are invited to complain under Senate bill 2673.

Finally, Senator, I would just like to commend the President and the Senators and the Congressmen who are supporting tuition tax credits in this session of the Congress.

Senator PACKWOOD. Thank you.

Dean Katz, good to see you again.

STATEMENT OF LAURENCE KATZ, DEAN, UNIVERSITY OF BALTIMORE SCHOOL OF LAW, BALTIMORE, MD., ON BEHALF OF THE COALITION OF PARENTS AND EDUCATORS FOR TUITION TAX CREDITS AND THE COUNCIL FOR AMERICAN PRIVATE EDUCATION, WASHINGTON, D.C.

Professor KATZ. Mr. Chairman, members of the committee. My name is Prof. Laurence Katz. I am dean at the University of Baltimore Law School. I am here today in several capacities. I am representing Parents and Educators for Tuition Tax Credits, a national coalition of private school and parent organizations in support of tuition tax credits, which includes such organizations as Agudath

Israel of America, the U.S. Catholic Conference, the Association for Evangelical Lutheran Churches, Citizens for Educational Freedom, National Catholic Educators Association, the Northeast Pastoral Center for Hispanics, the National Association for Episcopal Schools, and the Council for American Private Education, CAPE. Between them, these groups represent more than 5 million children in private schools.

I was going to say that it would be superfluous to address the general question of tuition tax credits and then turn to the specific bill before you with a series of points which are included in my full statement, which I trust is included in the record; but I find that all of the points have been made already. Therefore, let me depart and emphasize, if I may, simply two of the issues which I think are important.

I agree with you, Senator, that the core issue here is educational philosophy; and, as I understand it, everybody on all sides agrees that our educational philosophy is to not only recognize but encourage educational diversity, to give parents an opportunity to choose.

The harsh reality is that, given the current financial situation, parents do not have that choice; and, therefore, many parents who would like to have their children in nonpublic schools, because of the financial situation, are not able to have that opportunity. This bill will start to give parents that choice.

At the same time, it recognizes the financial situation of the country, and therefore the amounts allocated for tuition tax credits are indeed modest.

I, too, do not believe that the effect will be a mass flight from the public schools, and I see no evidence to indicate that that would be the case. In fact, the evidence seems to be to the contrary.

There are those who have no choice today who will, I assume, choose nonpublic education. But if we believe that there is the right for parents to have the choice, the current situation precludes that choice because of the finances of the parents.

On the constitutional issue, it has been said by Justice Powell, as to the current state of the Supreme Court's view of the situation——

Senator MOYNIHAN. Dean Katz, I wonder if I could interrupt one moment. I have to find out whether I have to go to vote again. I think I have already voted.

Professor Katz. If you haven't voted, I certainly would not take it personally if you voted.

Senator MOYNIHAN. No, I won't leave until we find out. But you are on an area of particular expertise concerning constitutionality, and I want to hear that.

Professor Katz. But the one who would be the most expert would be the prophet, and I am not a prophet.

I think Justice Powell has stated it correctly when he said that the existing standards, meaning the Supreme Court's past statements, do not necessarily afford "bright line guidance." And I think that is absolutely correct. The cases referred to this morning do reflect a difference of opinion, and it will be for the Supreme Court to finally decide the constitutionality of this particular legislation.

The eighth circuit is the most recent expression of judicial opinion. It is a unanimous decision of that panel that the Minnesota statute is indeed constitutional. Does that necessarily mean that this legislation before you is or is not? Well, it certainly bodes well, but it doesn't guarantee it.

We believe it meets those tests set forth by the Supreme Court relating to the purpose of the legislation, the effect of the legislation, and the entanglement of Government with the legislation. This bill is clearly aimed at education. Its effect will be on the parents, not on the schools. The entanglement is not between the school—there is no relationship between the school and the Government, but a relationship between the taxpayer and the Government.

It has been said that the schools are afraid—I think the American Jewish Congress commentary relating to the Jewish schools' being concerned, and other schools being concerned—that there will be Government interference. Well, the schools are not afraid. Not only are they not afraid but they are supportive of this legislation, because they recognize that the relationship is not between them and the Government but between the taxpayer.

We would have preferred, as I think you and Senator Packwood would, a bill which included colleges and postsecondary schools. We would have preferred a refundability clause. We, frankly, would be interested in exploring an expedited review for those who are concerned about the discrimination portion of the bill. And I think your bill had a severability clause as well, which I think would be helpful.

But, nonetheless, we feel that this bill does respond to the overall concerns and is thus worthy of the support of Congress.

Let me say a few words, if I may, about Jewish education in particular. According to the latest figures by the U.S. Department of Education, there are 101,000 Jewish students in 500 schools throughout the country. Of the 66,000 students in 200 schools in New York, for example, about half—half—come from families of poverty or near-poverty backgrounds. These same parents also have considerably higher living costs because of large expenses required to meet such religious requirements as kosher food. Tuition tax credits is a question of survival for a large number of Jewish parents, especially since Orthodox Jews traditionally have larger families. We believe that the time has come to pass Senate bill 2673.

I thank you for your attention.

Senator MOYNIHAN. Thank you, Mr. Dean.

Mr. O'Neill, I believe you are next.

STATEMENT OF JOSEPH T. O'NEILL, MINNESOTA FEDERATION CITIZENS FOR EDUCATIONAL FREEDOM, ROCHESTER, MINN.

Mr. O'NEILL. Thank you, Mr. Chairman.

My name is Joe O'Neill, and I am an attorney from St. Paul, Minn. I am here today representing the Minnesota Citizens for Educational Freedom; but more important, in my remarks which I have prepared, I served on the Minnesota Legislature for 10 years and was the author of the Minnesota income tax credit law which was in existence from 1971 through 1973 in Minnesota, and again was the principal author of the Minnesota income tax deduction bill which we passed in 1974 and which was just affirmed as constitutional for the second time by the eighth circuit in St. Louis.

Senator MOYNIHAN. Mr. O'Neill, I very much regret that it turns out I am said not to have voted, although I know I did vote. If you could forgive me.

Mr. O'NEILL. Sure.

Senator MOYNIHAN. You have important testimony, the one tuition tax credit arrangement in the country, offered it. I am going to have to recess these hearings until Senator Packwood returns, which should be any moment, or until I return which would be no more than 5 minutes. Would you forgive us? It is not our option, and it certainly is not yours.

Mr. O'NEILL. Sure. That's fine.

Senator MOYNIHAN. You, as a legislator, would understand.

[Whereupon, at 1:50 p.m., the hearing was recessed.]

AFTER RECESS

The CHAIRMAN. It is sort of musical chairs here. We have about three different committees going, and I have been meeting on dairy and farm legislation.

I guess Pat Moynihan and Bob Packwood have gone to vote. Mr. O'Neill, were you into your statement, or about to get into it?

Mr. O'NEILL. I just started, Senator.

Mr. Chairman, if I could identify myself again, I am Joe O'Neill, and I'm an attorney in St. Paul, Minn. I am here representing the Minnesota Citizens for Educational Freedom. But, more important, Senator, I was a member of the Minnesota Legislature, and in the State senate, and was one of the principal authors of the Minnesota income tax credit law which was passed in 1971 and was in existence in Minnesota for 3 years. Then I was the principal author of the Minnesota income tax deduction law of 1974, which was just affirmed as constitutional by the eighth circuit on April 30, 1982.

I have prepared my testimony, going through the Minnesota experiment, because I thought it may be of interest to you and the members of your committee as to what did happen when we had an income tax credit law that was similar to the one being proposed in S. 2673.

The first thing is that I'm sure you will hear of the purported dire and dastardly effect passage of this bill will have on the public schools because students will supposedly shift in large numbers to the nonpublic schools, public schools will close and their teachers will be out of work.

The CHAIRMAN. I think Mr. Bell commented on that this morning.

Mr. O'NEILL. Yes, he did.

Minnesota had the law in effect for 3 years, and the results show simply this, and I have outlined that in my remarks both with the student enrollment, number of schools, and number of teachers.

Student enrollment at a time in which Minnesota had a dropping enrollment from 1.6 to 1.3 million students attending both public and private schools, during 1971, 1972, and 1973, the public school enrollment rose slightly from 949,000 to 950,000 and then to 944,000, while the nonpublic dropped from 106,000 down to 94,000.

Now, in addition, Mr. Chairman and members of the committee, insofar as the numbers of schools and the number of teachers, they also remained about the same.

I think the rational conclusion from the Minnesota experiment shows that passage of a bill similar to S. 2673 will, if it follows the Minnesota example, result in the stabilization of the schools' enrollment in the two different sectors, continuing the rich diversity and pluralism which is so important in education.

What happened in Minnesota is that Minnesota's income tax credit law allowed parents to continue to exercise their freedom of choice of the educational system they desired for their children without as great a financial sacrifice as there had been before for exercising this freedom.

Minnesota has a very substantial income tax. I was in the legislature for 10 years, and we had that income tax grow from about $800 million to over $4 billion in the 10-year period. It provides roughly 50 percent of our budgetary support.

Traditionally in Minnesota, with our strong commitment to education, we have had a tradition of using the income tax receipts for supporting education. What we did was we found it only fair in 1971 to have a tax credit proposal for those parents who were already paying substantial money in income tax—a progressive rate up to 16 percent—and yet received a small income tax credit: $100 for elementary and $140 for secondary. So we felt that this was only equitable and fair, for these parents who were supporting public education, by giving them a tax credit.

I have also attached as part of my testimony and for your Senate staff the various instructions and mechanical ways in which the tax credit was operated in Minnesota. It was a very easily administered program. It was administered by our department of revenue and not by the department of education, which had some very good effects, I think, because of the natural biases against the nonpublic schools who were in the department. It really operated like any other tax credit, which was to have individuals make their burden of proof in individual claims.

The amount of money that was used was very miniscule. We educate about 10 percent of our children in Minnesota in the nonpublic schools. The cost to the State was even less than what we had estimated and was less than 2 percent of the education dollars, although we were educating 10 percent of the children and at that time we were increasing our State aid to public schools very substantially. The figures are available in my remarks.

In conclusion let me just add that I, too, have been a legislator. I have heard arguments on the constitutionality of these and other measures by the constitutional experts.

When one separates the wheat from the chaff, the constitutional talk and the dire foreboding predicted by the public school opponents of this measure, what you really must consider is how can we provide and continue to support the best educational opportunity for our children. We support public education. We would not want that to change. We would not want Minnesota to in any way downgrade the tremendous commitment they have. I am a strong believer, as I know you are, in the American way of life which provides for individual freedom, diversity, and freedom of choice in the important aspects of our lives.

The passage of this legislation will merely continue that educational tradition to allow the children of America and their parents to pick the educational opportunity of their choice.

We strongly support passage of this bill, and if you have any specific questions about either the income tax credit or the present income tax deduction law of Minnesota, I would be glad to try to respond.

Senator PACKWOOD. Let me ask one quick question. This 1972, 1972–1973 bill was the one that was declared unconstitutional?

Mr. O'NEILL. Yes, it was.

Senator PACKWOOD. Then what change was made? You added public tuition and the handicapped tuition and the summer tuition and the driver tuition. Was that the fundamental difference?

Mr. O'NEILL. Senator, the important thing was, we changed it from a credit to a deduction, and we changed the breadth of the class of the people who could receive it. In other words, we provided for public school parents to also receive it. And we had estimates in the eighth circuit in their decision, on April 30, 1982, that said this was one of the important factors, that there was over $2 million of tuition being spent by public school parents in Minnesota who were also eligible for this tuition deduction.

Senator PACKWOOD. Let me ask both you and Dean Katz a question. Do you think that the difference between a deduction and a credit is a critical difference from a constitutional standpoint?

Professor Katz. I don't understand that there should be a difference.

Senator PACKWOOD. I don't, either. I understand the the difference between just private tuition and public and private tuition; it would give it to a broader class.

Mr. O'NEILL. And actually, Senator, we took the $140, or it got up to $167 in the third year of the income tax credit, and tried to figure out what that was in an income tax deduction, and then we raised the income tax deduction to $500 for elementary and $700 for secondary. There is a proposal now that has passed the Minnesota house but not the Minnesota senate that would raise those figures in accordance with inflation over the last 5 years to $750 in elementary and $1,140 in secondary.

The CHAIRMAN. I am not certain how you are proceeding. We will just go down the line.

Mr. Bromelkamp?

STATEMENT OF HENRY BROMELKAMP, MINNESOTA COALITION FOR TUITION TAX CREDITS, ST. PAUL, MINN.

Mr. BROMELKAMP. Thank you, Senator Dole and Senator Packwood.

My name is Henry Bromelkamp. I reside in Rochester, Minn. and represent the Minnesota Coalition of Parents and Teachers for Tuition Tax Credits. I am here today to testify in support of S. 2673, the Educational Opportunity and Equity Act of 1982.

I am the father of nine sons, seven of whom have graduated from private elementary and secondary schools. My other two sons are currently enrolled in an elementary church-related school. Throughout the years I have been required to financially support two educational systems because I exercised a constitutionally guaranteed right.

Because of my concern for my children's access to quality education, I have willingly served on the board of education associated with the private schools they attended. As an advocate for quality education for all students and my firm belief that children are the greatest single resource for the future of our Nation, I have just completed 7 years as a member of the nine-member Minnesota State Board of Education. This Board is appointed by our Governor and is responsible for establishing public policy affecting elementary, secondary, and vocational technical education in Minnesota. I do want you to understand that my remarks today represent only my personal views and the position of the coalition I represent.

Education today is as important to our culture and the strength of our Nation as it was when the very first compulsory education law was passed in 1647. During the intervening 335 years much has changed in education and in our community life, but the broad contribution of quality education to the welfare of individual citizens and the community at large remains quite evident.

The public good that is served by educating all of our school-age citizens has not been diminished by the passage of time. I would even submit that the public good rendered to the Nation by an educated citizenry is of even greater importance today. That public good is served by the private education sector just as well as it is served by the public sector.

S. 2673 recognizes the signficant financial contribution that private schools make to the public good by offering quality education to citizens and at the same time saving the Public Treasury billions of dollars. It recognizes the right of parents to enroll their children in educational settings which are compatible with their value system and which will most appropriately serve the individuality of their children.

As Senator O'Neill had mentioned, during the 3 calendar years of 1971 through 1973, when Minnesota had an operable tuition tax credit law, there was general acceptance that parental rights were being upheld and educational quality was being maintained with no adverse community backlash. During the 3 years that Minnesota was acknowledging parents' rights to make educational choices by providing tax credits for a portion of their educational costs, the Minnesota Legislature increased its annual financial commitment to public education by an amount significantly above the inflation rate. This increase was possible in part because of the multimillion-dollar savings to the State when approximately 10 percent of the elementary and secondary students chose to enroll in private schools.

It is also worthy to note that during the 3 years that tuition tax credits prevailed in Minnesota, the percent of Minnesota students attending private schools fell below the national average. This is simply another indication that tuition tax credits are not a threat to public school enrollment.

Senator Dole and Senator Packwood, and members of the committee, since many respected authorities on constitutional law are convinced that provisions of S. 2673 are constitutional, and since the courts have traditionally accorded Congress the latitude to enact more than one method to achieve a specific public purpose such as that served by the education of children, I urge passage of S. 2673.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Ms. Lundy?

STATEMENT OF MARILYN F. LUNDY, PRESIDENT, CITIZENS FOR EDUCATIONAL FREEDOM, WASHINGTON, D.C.

Ms. LUNDY. Thank you, Mr. Chairman.

I am Marilyn Lundy, from Detroit Mich., and I am speaking today as president of the national organization, Citizens for Educational Freedom.

We are a national organization, nonsectarian, nonpartisan; we are citizens and supporting groups. We don't represent any specific school or church group. Our whole thrust is seeking parents' rights in education, liberty and justice in education, and quality and equality for all children.

I might point out here, CEF was organized in 1959, and I became active in 1961. For many years we felt like we were the voice in the wilderness speaking out on parents' rights and freedom of choice in education; so you can imagine how beautiful it sounds to us to hear so many prestigious people speaking on the same theme, and even our administration saying the same things.

Yes, we strongly support the tuition tax credit legislation which your committee is looking at. We do so because we feel it strongly supports parents' rights, but it is also in good Federal policy; because we realize that it is Federal policy to support citizens' rights and also to recognize the service that they give to the Nation. We do this through direct tax aid, through medicaid, social security. We do it indirectly through tax credits and tax deductions for things such as preschool child care, conservation, energy conservation, donations to charities, et cetera. So we do believe that this tuition tax credit legislation falls well in that.

Obviously, there are a lot of people who disagree, and we've heard it all today. Of course, I would love to jump up and rebut everyone of them. But one point I would like to bring out is to ask you to look at another facet of the segregation issue.

Some people are trying to throw cold water on this legislation on the basis that it will promote segregation, and we think that is very false, and its very sad; because we know that the legislation prohibits any segregated schools.

But I would also like to ask you to look at the positive aspects. On the positive side, we suggest for your consideration that the enticements of tuition tax credits will be a powerful encouragement for schools to comply with civil rights legislation. As proof, in Louisiana, after legislation was passed that brought benefits to parents paying specific fees to nondiscriminatory schools, 42 schools which formerly had not signed compliance with civil rights did sign their compliance. So it has a very positive aspect.

But, really, how many minority children have been prohibited from choosing nonpublic schools because of their discriminatory policies? The Justice Department estimates that, of the 20,000 nonpublic schools in the Nation, less than 100 have discriminatory policies, and these are not tax exempt.

On the other hand, how many minority parents have been prohibited from choosing nonpublic schools because of their inability to pay tuition? Certainly the number of children denied admission because of discriminatory policies is small, indeed, compared to the vast numbers of minority children denied admission because of their parents' inability to pay tuition over and above education taxes.

It certainly is a hollow victory, indeed, for minorities to be assured that nonpublic schools won't discriminate, if the minority families can't afford to choose among them.

We also look at the concern that our opponents have as to the fact that tuition tax credits will empty the public schools. And we find it really appalling that people who are responsible for the education of public schools have so little faith in them that they think if parents get a slight return on their taxes that they would flee. We who support freedom of choice believe that that very freedom of choice and competition will help improve all schools, and that the public schools certainly do compete well now and will always be able to compete.

Of course, there are many other things that I would like to add to it; but we certainly encourage you, Senators, in your committee, to continue to support tuition tax credits.

We believe this is a citizens issue. It is not an issue of public versus nonpublic schools or of church versus state. It is a matter of equity for citizens, of civil and religious liberties for families, of parental rights in education, and of quality education with liberty and justice for all children.

Thank you, Mr. Chairman.

[The prepared statements of the previous panel follow:]

STATEMENT OF PHILIP J. MURREN, ESQ.

RE: SENATE BILL 2673, TUITION TAX CREDITS

HEARINGS BEFORE
THE SENATE FINANCE COMMITTEE

JULY 16, 1982

SUMMARY OF PRINCIPAL POINTS

1. Testifying on behalf of Committee for Private Education, composed of Knights of Columbus, Catholic Daughters of America, Daughters of Isabella, National Council of Catholic Women, National Catholic Educational Association, and Citizens for Educational Freedom.

2. The Committee enthusiastically endorses S. 2673, the Educational Opportunity and Equity Act of 1982, and urges its expeditious enactment by Congress.

3. Senate Bill 2673: a) facilitates true liberty in educational choices; b) fosters healthy competition and improvement in education; c) will not harm public schools; d) will penalize racially discriminatory schools without unduly burdening the liberties of nondiscriminatory schools; and e) is not violative of constitutional principles of church-state separation.

STATEMENT OF PHILIP J. MURREN, ESQ.*

RE: SENATE BILL 2673, TUITION TAX CREDITS

HEARINGS BEFORE
THE SENATE FINANCE COMMITTEE

JULY 16, 1982

I appear today to offer testimony on behalf of the Committee for Private Education, an organization composed of the following constituent groups: The Knights of Columbus (membership 1.37 million persons); The Catholic Daughters of America (membership 170,000); The Daughters of Isabella (membership 130,000); The National Council of Catholic Women (10 million affiliate members); The National Catholic Educational Association (200,000 Catholic school teachers and administrators, and 3.5 million students); and Citizens for Educational Freedom, a nonsectarian organization with branches throughout the United States. The Committee has been formed for the express purpose of supporting President Reagan's Educational Opportunity and Equity Act of 1982.

Our law firm has closely followed the development of the tuition tax credit concept in the Congress over the past several years, and we have come to conclusions respecting the concept and, in particular, this bill, which we feel it important that you hear:

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* Partner, Ball & Skelly, Harrisburg, PA.

We would hope that Senate Bill 2673 could be considered upon its merits - that is, in terms of its practical effect in helping people, in promoting freedom, and in terms of its constitutionality. I say this, because I greatly fear that rational public discussion of the bill may not ensue, that subtle appeals to religious bigotry and appeals to hysteria may cloud the picture so greatly that the bill may never really be considered on its true merits. When I speak of "appeals to hysteria", I merely mean to say that major opponents of the tuition tax credit concept have been making rather intemperate statements to the effect that, if this measure is passed, public education is doomed. Of course, one would wonder why. If public education is highly valued, and if it is doing a job that is commendable in the eyes of most Americans, then it is inconceivable that the passage of the tuition tax credit bill would "doom" public education. To argue that public education cannot survive competition is to be overly defensive and unjustly to demean the capabilities of public schools. But the doomsayers go on to say that public education, regardless of its failures, must not be competed with, because it bears the sacred character of unifier of our society, teacher of common values, embodiment of the democratic way of life. That argument gives public education virtually the status of a civil religion.

It is extremely misleading to characterize tuition tax credits legislation as an anti-public school measure. Everyone stands to gain from encouragement of a situation where both public and private education are strong, offering real choices to parents and their children: the more free choice, the more democracy. Education in a free society consists of many institutions - not just one, not especially one. Each must take its chances in the free market. That competition is good for education is confirmed by almost universal experience: in places where private education flourishes, public education flourishes as well. Government acts wisely where it seeks to facilitate the realization of the deeply-rooted aspiration of its citizens for a genuine opportunity to choose the means of education best suited to the needs of their children.

Permit me then to turn to the specific constitutional questions which relate to the tuition tax credit concept.

I.

From the point of view of constitutional law, the tax relief concept contained in Senate Bill 2673 must be seen in terms of aiding freedom and (in view of contentions of opponents of the bill) in light of whether it violates the concept of church-state separation. Concerning the first aspect, there can be no doubt that the tax credit concept has three important constitutional dimensions: it promotes religious liberty, and - apart from that - it promotes intellectual liberty. And it helps secure parents' rights to guide their children's destiny. In a truly free society, it would be hard to imagine anything more an essential part of human freedom than to be able to choose the education which one's own child is to have. The Supreme Court has, in various factual contexts, upheld these three liberties - religious, intellectual and parental - as "fundamental" rights. I hardly need take this body into the details of those decisions, but a short reference to them is important since, it must be stressed again, the constitutional issue before this subcommittee is not whether Senate Bill 2673 violates the Establishment Clause of the First Amendment; rather it is twofold: whether it violates the Establishment Clause and whether it promotes the values encompassed by the First Amendment's Free Exercise Clause - and indeed the freedoms of mind and of parental nurture protected by the Fifth and Ninth Amendments. Unhappily, the constitutional debate has thus far centered almost exclusively on the first question.

There are abundant expressions by the Supreme Court vindicating the rights of parents to choose private, or private religious, education for their children. The decision, over half a century ago, of Pierce v. Society of Sisters, 268 U.S. 510 (1925), laid it down that our Constitution's "fundamental theory of liberty"

> " . . . excludes any general power to the State to standardize its children by forcing them to accept instruction from public teachers only."

The Supreme Court, in Pierce, also said that parents have a legal duty to provide education for their children. But if they have a "fundamental freedom" to do that other than in public school, it follows absolutely that the parent has a basic freedom to educate his child in a nonpublic school. The right to nonpublic education is, therefore, a fundamental liberty. That point was recently restated with great emphasis by the Supreme Court in the case of State of Wisconsin v. Yoder, 406 U.S. 205 (1972), involving Amish parents.

Too little consideration has been given to that "fundamental liberty" in terms of today's economic conditions. In many contexts, over the past century, the Supreme Court has pondered the question of whether a "liberty" is really a "liberty" if it cannot be enjoyed.

Parents in the 1980s face the twin pressures of the effects of runaway inflation and runaway taxation. Their "fundamental liberty" to educate their children in non-state schools is rapidly becoming a paper liberty. To obey conscience, they must educate their children in those schools; to obey the state, they must pay a second time for education through the school tax. It is quite correct to observe that the Catholic school system in the United States was built and paid for through the heroic sacrifices of immigrant working people - and that the burgeoning Protestant Christian school movement in our country today is being carried forward through a similar spirit of sacrifice. But dare we say that it is constitutionally required that citizens make such sacrifices as the price of complying with attendance laws in a way compatible with conscience? And does not, then, our tax structure (an immense factor in the economic pressures upon parents) in fact push parents to place their children in schools of the State?

It is utterly dishonest, in the face of the economic strain which so many parents of nonpublic school children now face, to say that they are perfectly "free" to "exercise their preference" for private education. They are not, and a constitutional argument in favor of the tax credit concept is that it helps them to have that freedom.

II.

I come now to the second constitutional inquiry: Does the tax credit concept violate the Establishment Clause of the First Amendment? The question should be stated more precisely: In the Congress's necessary weighing of the constitutional values promoted by the tax credit concept as against possible Establishment Clause dangers resulting from the adoption of that concept, where shall the balance lie?

I have studied carefully the constitutional arguments made against the tax credit concept, and it is my opinion that the concept presents no danger whatever of violation of our principle of church-state separation reflected in the Establishment Clause. I conclude this in light of the tests which the Supreme Court has laid down for the determining of Establishment Clause violations. As you know, these are three: (1) Has the legislation a secular purpose? (2) Has the legislation a primary effect either advancing or inhibiting religion? (3) Does the legislation cause excessive entanglements between church and state?

It is clear that the tax credit concept passes the first and third of these tests. The Court has found no difficulty, even where it struck down legislation aiding education in religious schools, in accepting the legislature's expression that it was enacted for secular purposes, Lemon v. Kurtzman, 403 U.S. 602 (1971). Certainly, too, the tax credit concept creates no "excessive entanglements" between church and state. It sets up a relationship between the federal tax authority and the individual citizen, as citizen. It creates no relationship between the Government and a church. The "day-to-day relationships" which the Court has discountenanced in its pronouncements against entanglements are completely lacking in the basic tax credit concept*.

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* Some opponents of the concept also make mention of so-called political entanglements, borrowing from language of the Court in Lemon v. Kurtzman. That idea at core was that, if one kind of group - namely, a religious group - campaigned for legislation, the result would be "divisiveness" in the community; therefore, the legislation if enacted would be unconstitutional. This "doctrine", the brainchild, not of the Founding Fathers, but of Professor Paul Freund of Harvard, was invented and applied ad hoc in litigation in which Catholic schools were the prime figures. It was never dreamed of before and has never been applied in any other instance. This bizarre concept, I believe, will be abandoned resolutely, once its ramifications are posed in such a variety of logical applications as aid to Israel, religious witness in civil rights, welfare rights, disarmament, etc.

That brings us to the final test: Does the tax credit concept have "a primary effect advancing or inhibiting religion"? It first must be understood that there is no decision of the Supreme Court directly in point. Everson v. Board of Education, 330 U.S. 1 (1947), is a relevant fundamental case decided under the Religion Clauses. Saying that the Establishment Clause creates a "wall of separation" between church and state, the Court went on to say that that clause did not command the denial of public welfare benefits to children on account of their enrollment in religious schools, but that the Free Exercise Clause commanded that they could not be excluded from such benefits because of such attendance.

The cases since then which have involved programs of benefits to such children have turned on three points: (a) the nature of the benefit, (b) the nature of the recipient, and (c) the manner in which the program is necessarily administered. In Board of Education v. Allen, 392 U.S. 236 (1968), the Supreme Court upheld the free loan of non-religious textbooks to children attending religious schools. Here the nature of the benefit - a book - was held to be "neutral" from the point of view of sectarian teaching; the child was deemed (as in Everson) to be the recipient of the benefit; and the program was administrable without prolonged or supervisory interrelationships of the state to the church schools. In Lemon v. Kurtzman, the Court struck down programs whereby states paid money to religious schools to reimburse them for furnishing educational services to children in mathematics, modern foreign languages, physical science and physical education. The Court said that these programs violated the Establishment Clause because they were excessively "entangling" - putting the state in the role of exercising surveillance to see that those educational services were, in content and mode of teaching, absolutely "secular". In Sloan v. Lemon, 413 U.S. 825 (1973), the Supreme Court also struck down a Pennsylvania statute whereby parents of nonpublic school students in that state were reimbursed by the state for tuition. The Court pointed out that most of the schools attended by nonpublic school pupils in Pennsylvania were "affiliated with the Roman Catholic Church." (Id. at 830.) The Court held the program invalid on the principal ground that "[t]he State has singled out a class of its citizens for a special economic benefit." (Id. at 832.) The Court at once made the following distinction:

> "We think it plain that this is quite unlike the sort of 'indirect' and 'incidental' benefits that flowed to sectarian schools from

> programs aiding all parents by supplying bus transportation and secular textbooks for their children." Ibid. (Emphasis by the Court.)

In Committee for Public Education v. Nyquist, 413 U.S. 756, (1973), the Court struck down a New York statute which contained a tax relief feature. In that statute, the tax relief feature (a) constituted three sections of a comprehensive statute of aid to religious schools and to parents of children enrolled therein and (b) was welded to a tuition grant provision similar to that voided in Sloan v. Lemon. As the Court stated, the amount of the deduction was " . . . unrelated to the amount of money actually expended by any parent for tuition", but was calculated on the basis of a formula which the Court said was "apparently the product of a legislative attempt to assure that each family would receive a carefully estimated net benefit, and that the tax benefit would be comparable to, and compatible with, the tuition grant for lower income families." (Id. at 790.) The Court therefore held that this tax relief provision was indistinguishable from a tuition grant. The Court underscored the negative effect of this relationship by again emphasizing that the benefits of the program would go to one religious group predominantly. (Id. at 768.)

While there have been other decisions in this general area of legislation, decisions which we have now briefly discussed (Pierce, Yoder, Everson, Allen, Lemon, Sloan and Nyquist) provide this Committee its guideposts in considering federal tax credit legislation.

It is clear that the offering of tax credits would serve to bring some equity to the federal government's overall program of aid to education. Viewed from this perspective, federal funding is not being channeled to a small class of recipients at all.

Secondly, the benefits do not flow to religious institutions. They do not flow to institutions at all. In Everson those who contended that the use of public funds to bus children to religious institutions was, in practical effect a benefit to those institutions, were held to be in error. As Mr. Justice Powell noted in his opinion in Sloan, it was at most an indirect or incidental benefit to those schools, and its real effect was that of "aiding all parents". That is precisely the effect of the proposed tax credit concept.

Thirdly, the tax credit concept involves (as we have noted) no entanglements between church and state.

You desire to know: would the Supreme Court uphold federal tax credit legislation if enacted into law?

1. The precise issue has never been ruled upon by the Supreme Court.
2. Those decisions of the Court vindicating religious, intellectual and parental rights in education militate strongly in favor of constitutionality.
3. The adoption of the concept by the Congress will have strong constitutional significance in that it will represent a national judgment with respect to the public interest and welfare.

III.

I conclude with discussion of some specific provisions of Senate Bill 2673.

This bill is designed primarily as a measure to provide tax relief to low and middle income parents whose ability to realize their freedom of choice in the education of their children is hampered by economic circumstances, in part owing to the weight of their tax burden imposed by government. Since government has been responsible, in part, for creating the problem, it is well that government relieve a small measure of that problem.

Senate Bill 2673 also contains strong provisions against racial discrimination in education, denying otherwise available tax relief to parents who choose to send their children to segregative academies. At the same time, Senate Bill 2673 does not cast its anti-discrimination net so broadly as to create needless and burdensome government regulation of nonsegregated schools. The truly discriminatory school will not escape penalties under this bill, while the truly nondiscriminatory school, or the school which unintentionally discriminates (and rectifies the situation), has nothing to fear from the bill's provisions. The importance of avoiding the erecting of a tight regulatory framework, and of giving the schools a chance to rectify instances of discrimination are important to the essential freedoms of private, especially religious, schools. No one would suggest that all persons who pay taxes to a public school district which is responsible for an isolated instance of racial discrimination should be disqualified for any tax deductions for payment of school taxes they might otherwise enjoy. So, too, simple equity demands that private schools not be treated in an exceedingly harsh manner.

It has been suggested that Senate Bill 2673 be amended so as to provide for an early court test of its constitutionality. We believe this would be reprehensible. If Congress exercises its judgment that the legislation is a matter of fundamental fairness to all Americans, then it would be ridiculous to cast doubt on the wisdom of that judgment by expressing a less than firm judgment as to the constitutionality of the measure.

We commend President Reagan, his Administration, and those Senators and Congressmen who have supported the fundamental justice which the Educational Opportunity and Equity Act of 1982 would provide, and we ask that it be advanced through the Congress in the most expeditious manner available, including its attachment to pending revenue proposals.

STATEMENT OF PROFESSOR LARRY KATZ

BEFORE THE SENATE FINANCE COMMITTEE

FRIDAY, JULY 16, 1982

Mr. Chairman and members of the Committee: My name is Professor Laurence Katz. I am the dean of the University of Baltimore Law School. I am here today in several capacities. I am representing "Parents and Educators for Tuition Tax Credits," a national coalition of private school and parent organizations in support of tuition tax credits, which includes such organizations as Agudath Israel of America, the United States Catholic Conference, the Association for Evangelical Lutheran Churches, Citizens for Educational Freedom, National Catholic Educators Association, the Northeast Pastoral Center for Hispanics, the National Association for Episcopal Schools and the Council for American Private Education. Between them, these groups represent more than five million children in private schools.

For the past two years I have also been privileged to serve as chairman of the Campaign to Relieve Independent Education of Agudath Israel of America, a 60 year old national Orthodox Jewish movement headed by the nation's most eminent Jewish scholars. Just one month from today, on August 15th, Agudath Israel will mark the tenth anniversary of the testimony of its president, Rabbi Morris Sherer before the House Ways and Means Committee in support of tuition tax credits.

Now ten years and several attempts later we are for the first time supporting a measure which enjoys the active support of the President of the United States. Perhaps, it would be superfluous to use this opportunity to review the merits of tuition tax credits, since our views on this subject are amply documented in the proceedings of previous hearings, most recently on June 4, 1981 in the Senate's Subcommittee on Taxation and Debt Management.

Instead, I wish to address the bill that you, Mr. Chairman, intorduced on behalf of the Administration, S. 2673, and otherwise known as the Educational Opportunity and Equity Act of 1982.

The justice of this cause is best evident in the fact that this issue has always enjoyed bipartisan support. As a result of the election of President Ronald Reagan and the revival of traditional family values which is so important to the stability of our nation, tuition tax credits has once again been advanced on our national agenda.

The groups that I represent this morning support this measure because it meets all of the criteria that we have established throughout the many years of our effort. The bill, first and foremost, gives recognition to the legitimacy of freedom of choice in education. It recognizes a parent's right to send his child to a school which best reflects his cultural and ethnic background. A tax credit is the best means of recognizing a citizen's response to a national priortiy. We grant tax credits for people who insulate their homes because it decreases our dependency on foreign imported oil. We offer a tax credit for child care to enable a spouse to work. Education, which is compulsory in our land and certainly not a luxury, should be no less important.

The Administration's bill is modest. It initially grants only a maximum $100 tax credit in 1983 and includes an income cap to assure that only those burdened the most by tuition would benefit. We appreciate the Administration's effort to phase in the bill, since these are difficult economic times. But it is also encouraging to see that the Administration considers tuition tax credits important enough even in an age of economic retrenchment.

We believe that this measure will not destroy our nation's public schools which we firmly support. Even with the tax credit, attendance in a private school is relatively expensive. It is inconceivable that people would opt for a private school even with a tax credit when they can receive a free education. We do, however, see the benefit of competition which can only benefit all our children.

We are satisfied that this bill will not in any way benefit institutions that racially discriminate. The measure in fact goes beyond any previous anti-discrimination provisions. It not only requires that a school be tax exempt under IRS Code Section 501 (c) (3), which is currently before the court, but it requires the school at the end of a calendar year to submit to the IRS a statement subject to penalties for purgery certifying that the school has not followed a racially discriminatory policy during the calendar year. In addition, it gives the Attorney General the power to commence action based on a complaint against a school which has racially discriminated.

In my view, this bill is constitutional. The relationship is between the taxing agent and the taxpayer and in no way involves the schools, clearly avoiding a church-state conflict. Its mechanics are like any other tax credit: a check-off on an income tax form.

To be frank, we would have preferred that this bill should include colleges, vocational schools and graduate schools, thus applying the benefit equitably to any taxpayer who demonstrates an expense for education. We would have also preferred to have included a refundability clause which would have benefited some of the poor parents who are finding it increasingly more difficult to exercise their right to send their child to the school of their choice. But we feel that this bill does respond to our overall concerns and thus is worthy of the support of the Congress.

Let me say a few words about Jewish education in particular. According to the latest figures by the United States Department of Education, there are 101,000 Jewish students in 500 schools throughout the country. Of the 65,000 students in ʒools in New York State, for example, about ha families of ; or near poverty backgrounds. These same par considerably · living costs because of the large expenses i such religiouirements as kosher food. Tuition tax credits survival for e number of Jewish parents, especially since traditionallylarger families.

Let us ; 2673 now. It is an idea whose time has come

TESTIMONY OF JOSEPH T. O'NEILL

July 15, 1982

Mr. Chairman and members of the Committee:

My name is Joseph T. O'Neill, attorney for the law firm of O'Neill, Burke and O'Neill, St. Paul, Minnesota. I served as an elected State Representative and elected State Senator in the Minnesota Legislature from 1967 - 1976 and am presently serving as legislative counsel for Minnesota Citizens for Educational Freedom (C.E.F.). I am married and have had eight children who have utilized both public and private educations in furthering their educational opportunities. I am here to testify in support of SR 2673, the Educational Opportunity and Equity Act of 1982. During the 1971 Minnesota Legislative session, I was one of the legislative proponents and floor managers in the Minnesota Senate for what became the Minnesota Income Tax Credit law, Chapter 944 of Laws, Minnesota 1971, (a copy of which is attached as Exhibit A). This law remained in effect for the taxable years 1971, 1972 and 1973.

I have prepared some statistics to show some of the effect of the Minnesota Income Tax Credit law which should be of interest to you as you hear testimony concerning this important proposed legislation.

First, when one considers this proposal, I am sure you will hear of the purported dire and dastardly effect passage of this bill will have on the public schools, because students will shift in large numbers to the nonpublic school, and the public schools will close and their teachers will be out of work.

Well, Minnesota had this exact law in effect for 3 years, and these are the results:

STUDENT ENROLLMENT

	Public	Nonpublic	Total	Nonpublic % of Total
1970	942,474	118,091	1,060,565	11.1
*1971	949,600	106,392	1,055,992	10.1
*1972	950,701	99,139	1,049,870	9.5
*1973	944,555	94,023	1,038,578	9.1
1974	939,998	92,128	1,032,126	8.9

* Years in which Minnesota Income Tax Credit law was in effect.

NUMBER OF SCHOOLS

	Public	Nonpublic	Total	Nonpublic % of Total
1970	2,125	495	2,620	18.9
*1971	1,829	471	2,300	20.5
*1972	1,815	474	2,289	20.7
*1973	1,815	465	2,280	20.4
1974	1,776	475	2,251	21.1

NUMBER OF TEACHERS

	Public	Nonpublic	Total	Nonpublic % of Total
1970	48,911	6,628	55,539	11.9
*1971	51,553	6,442	57,995	11.1
*1972	52,643	6,261	58,904	10.6
*1973	51,100	6,025	57,125	10.6
1974	51,176	6,094	57,270	10.7

As the figures for these years show, the Minnesota Income Tax Credit law did not result in large numbers of students deserting the public schools for the nonpublic schools. In fact, Minnesota figures show that there was a slight drop in nonpublic school enrollment each year of the three years while there was a slight rise in public school enrollment during part of the same period of time. The number of public schools and the number of public school teachers also changed very little. I think a rational conclusion from the Minnesota experiment shows that passage of a bill similar to SR 2673 will, if it follows the Minnesota example, result in the stabilization of the

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* Years in which Minnesota Income Tax Credit law was in effect.

schools' enrollment in the two different sectors continuing the rich diversity and pluralism which is so important in education. What happened in Minnesota is that Minnesota's Income Tax Credit law allowed parents to continue to exercise their freedom of choice of the educational system they desired for their children without as great a financial sacrifice as there had been before for exercising this freedom. As Senator Moynihan said in his commencement address at Lemoyne College on May 14, 1977:

> "At the college and university level, we take for granted that diversity is a good thing . . . Precisely the same values inhere in our private elementary and secondary schools, although public policy has been less ready to embrace them. They provide diversity to the society, choices to students and their parents, and a rich array of distinctive educational offerings that even the finest of public institutions find difficult if not impossible to supply, not least because they are public and must embody public values. May I add that many of our parochial schools have demonstrated a laudable efficiency in their use of resources; that is not without its costs, to be sure, but it is notable that parents who choose to send their children to private schools can expect educational value for money, which is perhaps the more important to them since they simultaneously pay their full share of the support of the public schools that their children do not attend.
>
> Diversity. Pluralism. Variety. These are values, too, and perhaps nowhere more valuable than in the experiences that our children have in their early years, when their values and attitudes are formed, their minds awakened, and their friendships formed." (Lemoyne College Commencement Address, May 14, 1977)

Secondly. **The Minnesota Income Tax Credit law provided a measure of real equity for parents who willingly support public education at both the state and local level and receive a small amount of relief on their state income tax.** In Minnesota, our State Constitution has a strong provision specifying the duty of the Legislature to provide public education for our citizens. The Minnesota Income Tax and the receipts thereof have traditionally been considered by the Minnesota Legislature as receipts to primarily be used to support public education in Minnesota. This principle has been a strong one in Minnesota and there are few states which spend more on both the state and local level for the support of education per capita than Minnesota does.

Our income tax in Minnesota is both substantial (raises over $4,000,000 per biennium providing roughly 50% of our budget receipts) and highly progressive (rates graduating to 16%). It is kind of a "Return the Favor" philosophy with higher income earners paying higher tax which is used primarily to support education in Minnesota. Since parents of children attending nonpublic schools are of course among the payers of Minnesota income tax, it appears only fair and equitable that some portion of this income tax paid by them be allowed as a credit where the parents are exercising their freedom of choice to pay an additional tuition expense in sending their children to a nonpublic school while still continuing to support public education. Passage of SR 2673 we believe will give some assistance to these same parents on their Federal income tax and provide recognition for these same parents of their excellent commitment to funding public education which they and their children do not use.

Thirdly. **The mechanical way of qualifying and claiming the Minnesota Income Tax Credit was very easy and could be duplicated on a federal level by the passage of SR 2673.** I have attached the following documents:

A. Minnesota Nonpublic School Income Tax Credit Instructions (Exhibit B) and the "1972 additions and changes (Exhibit C) and 1973 additions and changes (Exhibit D)" which includes Schedule NSC which is the Minnesota nonpublic income tax form used by taxpayers in 1971.

B. Form NSRC (Exhibit E) Minnesota Department of Revenue Nonpublic School Receipt and Certification for the calendar year 1973, which was filled out by the nonpublic school and given to the individual taxpayer claiment who attached it to his or her return. It is similar to the W-2 form prepared by employers for employees to attach to their return. The procedure outlined herein worked very well in Minnesota and placed the credit like any other credit on a taxpayers' individual burden of proof and claim requirement.

The Minnesota Department of Revenue indicated there were no big difficulties in utilizing the law. In fact, getting the administration of this help to parents out of the Minnesota Department of Education and to the Department of Revenue allowed some of the natural biases against the nonpublic schools and their parents to be avoided which I am sure helped the smooth administration of the law.

Fourthly. **The amount of tax credit given in Minnesota was below our original estimate — It was a very small percentage of education dollars in the Minnesota budget.** As indicated before, Minnesota has always had a great commitment to funding public education which supporters of the Minnesota Income Tax Credit law then and now never want to change. When the 1971 law was passed in Minnesota we estimated the use of credit would result in revenue loss of $21,000,000 for the 1971 biennium out of the total State budget of $2,700,000,000 and $22,000,000 for the 1973 biennium out of the total state budget of $3,300,000,000, which figures show that the amount of revenue loss was less than 1% of the total State budget. Actually the amount of credit actually used was less than we estimated as these actual figures show:

	Number of Taxpayers		Amount
1971	44,903		$7,394,210
1972	44,608		8,631,485
1973	44,308		10,651,731
		TOTAL	$26,677,426

During these bienniums the amount of dollars appropriated for elementary and secondary public education from the State was as follows:

1971 Biennium	$1,135,000,000
1973 Biennium	$1,326,000,000

When you look at the percent of students educated in nonpublic schools being roughly 10% of total student enrollment during this period of time, there is less than 2% of the education budget which was used to assist parents who chose to exercise their freedom of choice by sending their children to the nonpublic school.

Therefore, I think, it could be safely said the Minnesota experiment revenue loss percentage wise is not a great amount and when one considers the benefits public education receives by not having to build and provide direct educational costs for 10% of Minnesota students, the figures are strongly supportive for passage of this measure as a financially sound one.

In conclusion, let me just add that I too have been a legislator and have heard arguments on the constitutionality of these and other measures by the constitutional experts. But, when one separates the constitutional talk and dire foreboding predicted by the public school opponents of this measure, what you really must consider is how can we provide and continue to support the best educational opportunity for our children. I am a strong believer, as I know you are, in the American way of life which provides for individual freedom, diversity and freedom of choice in the important aspects of our life. Passage of this legislation will merely continue that educational tradition that will allow the children of America and their parents to pick the educational opportunity of their choice.

We strongly support passage of this bill which is in the best interest of American education and our children.

Respectfully submitted,

Joseph T O'Neill

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Testimony of Henry J. Bromelkamp
Before the Senate Finance Committee
U.S. Congress, Washington D.C.
July 16, 1982

I am Henry Bromelkamp from Rochester, Minnesota and today I am representing the Minnesota Coalition of Parents and Teachers for Tuition Tax Credit. I am the father of 9 sons, 7 of whom have graduated from private schools and have been educationally equipped to pursue training programs and higher education in several different skill areas. My other 2 sons are currently enrolled in an elementary church-related school. I have throughout the years been required to financially support 2 educational systems because I exercise a constitutionally-guaranteed right.

Because of my concern for my own children's access to quality education, I have willingly served on the school board where they were in attendance. Because of my concern for quality education for all students and my firm belief that children indeed are the greatest single resource for the future of our nation, I have just completed serving 7 years as a member of the nine member Minnesota State Board of Education. This Board is the State's publicly appointed agency that has the responsibility to establish the public policies for elementary, secondary and vocational education in Minnesota. I do want to make very clear that my remarks today relect only my personal viewpoint and the position of the coalition I represent.

The issue we are discussing today is an issue that touches many areas of our public policies and is an issue that requires our democracy to consider individual civil rights, the corporate public good, and a just tax structure.

Schooling today is as important to our culture and the strength of our nation as it was when the very first compulsory education law was passed in 1647. In the ensuing 335 years, much has changed in education and in our community life, but the awareness of quality education's impact on individual citizens and the community at large has remained constant.

One of the concerns voiced in the 19th century when publically-funded and publically-controlled schools were becoming a part of all communities was the issue of assuring that equal opportunities would be available to all. We today who advocate Tuition Tax Credits subscribe to that same premise.

The evolution of our housing patterns, the evolution of our political boundaries, and our culture biases that wear a different mask today, all have adversely impacted that ideal of equal educational opportunity that pricked our conscience over 100 years ago.

The "public good" that is served by all our school-age citizens having equal educational opportunities has not been diminished by the passage of time. I would even argue that the "public good" rendered our nation by an educated citizenry is of greater importance today. That "public good" is as much an integral part of the private educational sector as it is of the public sector.

Parents recognize that education crosses a multiplicity of public policies and, in fact, it is because of the significance of these variables that we are enthusiastic supporters of S.R. 2673.

At the same time that the passage of this legislation recognizes the tremendous financial contribution that private schools make both to the public good by offering quality education to citizens and at the same time saving the public treasuries billions of dollars; it recoginizes the right of parents to enroll their children in educational settings compatible with their value system and that which they deem will serve most appropriately the individuality of their child/children.

In the years that I have been active in education I have observed many changes in our society, in our entire educational philosophy, and in the goals and objectives attributed to and/or accepted by schools.

There is an abundance of research data, statistics, and legal opinions available today that address political issues and public concerns about:

the merits and demerits of secular humanism in educational institutions;

the probable demonstrable evidence that schooling is value-laden, value inculcating;

the ability for family values to withstand the subtle pressure of criticism from outside authoritative figures;

the impact of a monolithic system and its ability to diminish societal polarization;

academic freedom and court decision;

any parent, teacher, student consensus on quality education and its inherent values;

the overlapping and intertwining elements that confront us in most academic/value discussion;

the possible adverse effect on the public good by such diverse differences in individual beliefs and mores;

the need for balance between the government's concern for equality and the civil rights of citizens to exercise decisions in matters of conscience; and,

the difficulty, if not impossibility, for a monolithic structure to accept ideas and values that are antithetic to its power base.

As you are well aware, none of the research is definitive and conclusive on these questions.

Therefoee, I question the authority of a democratic form of governance to so structure a public service that access can effectively deny human rights and human differences simply because easy answers have not been found for profound questions. Or to structure a public service so that options are effectively denied the working poor.

During the three years that Minnesota had an operable income tax credit, there was general acceptance that parental rights were upheld and educational quality was maintained with no adverse community backlash.

Indeed, during these same 3 years that the state was acknowledging parents rights in educational choices and reimbursing them for a portion of their additional educational costs, the legislature each year increased its financial commitment to local school districts by an amount far above the inflation rate. This increase was possible in part because of the multi-million dollar savings to the state resources when 10% of the eligible students chose to enroll in private schools.

It is also worthy to note that it was during the enactment of the tuition tax credit that the % of Minnesota students attending private schools fell below the national %. Simply another indication that tuition tax credits are not a threat to public school enrollment.

Our country didnot begin its life intentionally or unintentionally structuring its support for education in a way that favored one belief or lack of belief, that mandated one value to the exclusion of some other value, and that only recognized group consensus in lieu of individual thought. In the past 150 years our government policies have strayed so that today, only those who conform to the enrollment restrictions of a government agency qualify for a fair share of the tax monies assigned to education. Thus what began 350 years ago as a right to educational pluralism, today is only a privilige accorded those financially capable of paying their tax bill for education and tuition.

The parental right which was so important in the early history of our nation and which was affirmed in the U.S. Supreme Court Decision of 1926 is today in serious jeopardy. The increasing cost of education is denying parents the responsibility and the choice to send their children to a school that will enhance those values upon which their family's foundation is dependent. Federal Tuition Tax Credits will not only rightfully reimburse parents for their additional cost of education, but it will safeguard the pluralism which is an inherent democratic principal.

Mr. Chairman and members of the Committee, since many respected authorities on constitutional law are convinced that provisions of SR2673 are constitutional and since the Courts have traditionally accorded Congress with latitude in order to achieve important public purposes such as access to education for all children and a just system of taxation, I urge your passage of S 2673.

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TESTIMONY OF
MARILYN F. LUNDY
PRESIDENT, CITIZENS FOR EDUCATIONAL FREEDOM
TO THE SENATE FINANCE COMMITTEE
July 16, 1982

Mr. Chairman, and Members of the Senate Finance Committee:

I am Marilyn Lundy, President of Citizens for Educational Freedom. I extend to you my gratitude, and the gratitude of my organization, for this opportunity of presenting to you our position on federal tuition tax credits for elementary and secondary education - S2673.

Citizens for Educational Freedom, or CEF as I shall refer to it, is a nonsectarian, nonpartisan national organization of citizens and supporting groups, predominately parents, dedicated to securing parents' rights in education, liberty and justice in education, and quality and equality for all children in education.

Please note - we do not represent any school or school system, or any church. We represent the citizens and parents of this nation in their effort to address government (state and federal) on matters of education, especially on matters pertaining to financing and regulation, since government has elected to finance and regulate education.

The basic premise we must all remember is that it is the parents, family if you will, who have the primary, fundamental and constitutionally guaranteed right and responsibility to direct the education of their children - that is to choose the schools or systems which best meet the needs of the child academically and best reflect the values and culture of the family. This right does not belong to a school, to a school system, to a church or even to government. Schools, churches and government are all agents which the parents may choose to assist them in exercising their rights and meeting their responsibilities in the education of their children. Also, it is the citizens whose taxes fund education - not the schools or the churches - and therefore we believe it is important that citizens and parents have representation independent of institutional structures - representation whose purpose is to address the questions of educational financing and regulation in the light of parental rights, social justice and civil and religious liberties.

Yes, this parents' organization, CEF, strongly supports S2673, the tuition tax credit legislation currently under consideration in this committee, and we urge our esteemed Senators to do so also.

We believe federal tuition tax credits for elementary and secondary education will give affirmation to and support of parents' rights in education. They will bring some share of justice to taxpaying middle and lower income parents. They will protect the civil and religious rights of parents and children in education, and they will improve the quality of all education by encouraging competition and accountability.

The question immediately arises: Is this legitimate federal activity? Is it consistent with federal policy or does it run counter to federal history and policy of supporting public schools only? In response, we would point out that elementary and secondary education historically have been jealously held as a state and local responsibility, with little or no federal involvement. But as federal involvement has developed over the past 20 years, emphasis has been placed, not on public schools only, but on recognizing the needs of both public and nonpublic school children. Most certainly, that was the basis on which the Elementary and Secondary Education Act was passed in 1965.

On the other hand, the federal government has consistently seen its role as protecting the rights of citizens and giving assistance either directly or indirectly through tax relief to citizens in recognition of their rights and the services they perform toward the general welfare. For example, directly there are federal grants such as medicaid and social security - both of which we might mention can be used at public or nonpublic institutions, secular or religiously affiliated. In indirect tax relief, we can look to tax deductions or credits for donations to charities and churches, for business investments and improvements, for care of the elderly, for pre-school child care, and for energy conservation, just to name a few.

Therefore, given the fact that a) parents have the fundamental and constitutionally guaranteed right to choose the education of their children; b) exercise of this right serves the public welfare by relieving taxpayers of the cost of approximately $2500 per child and by promoting diversity and competition in education; c) the financial ability to exercise this right is becoming increasingly constrained and limited due to rising costs of educational taxes and tuition; d) a right penalized is a right denied; and, e) the federal government is already providing some $15 billion annuallly in direct assistance to public schools - we believe that federal tax credits to parents paying educational taxes and tuition to nonpublic elementary and secondary schools are not only legitimate and consistent with federal policy, but in fact are a matter of social justice and education freedom.

Obviously, there are people who disagree with this analysis - people who believe that liberty and justice must be sacrificed for conformity and for the protection of a monolithic public school system. And unfortunately, some of these people have a penchant for throwing out false arguments which are designed to discredit the issue without allowing for serious or honest consideration. Typical is the argument built around segregation - that tuition tax credits will benefit segregated schools and will encourage greater patterns of segregation by race and economic backgrounds.

So false! So sad! and such a display of ignorance! As you Senators know, and anyone who has looked at the facts without prejudice, S2673 specifically disallows tax credits for tuition paid to a school which discriminates on the basis of race. And if a school is convicted of falsely reporting nondiscrimination policies and actions tuition tax credits will be prohibited for three years. On the positive side, we suggest for your consideration that the enticements of tuition tax credits will be a powerful encouragement for schools to comply with civil rights regulations. As proof, in Louisiana, after legislation was passed that brought benefits to parents paying specific fees to nondiscriminatory schools, 47 schools which formerly had not signed compliance with civil rights regulations suddenly did so!

But really, how many minority children have been prohibited from choosing nonpublic schools because of their discriminatory policies? The Justice Department estimates that of the 20,000 nonpublic schools in the nation, less than 100 have discriminatory policies, and these are not tax exempt. On the other hand, how many minority parents have been prohibited from choosing nonpublic schools because of their inability to pay tuition? Certainly the number of children denied admission because of a school's discriminatory policies is infinitessimal compared to the vast numbers of minority children denied admission because of their parents' inability to pay tuition over and above education taxes.

Certainly we all abhor discrimination in education and support legislation to prohibit it, but let us be honest and ask, for what purpose? Is it merely negative, to stop such policies and punish institutions which discriminate? Ot is it positive also - to actually enable minorities to exercise their basic human right of choosing their children's schools? If it is important that minorities are able to choose where they want to sit on a bus, surely it is even more important that they are able to choose where they want to send their children to school!

Figures show that nonpublic schools have only 2% difference in minority enrollment than do public schools, and recent sociological studies show that nonpublic schools often have a better pattern of integration on both racial and economic lines than do neighboring public schools. But even more important than figures is experience, and experience shows that whites do not change schools or choose schools to get away from blacks - they choose, as do more affluent blacks, to get away from poor education and crime problems. If all parents had the financial ability to make such choices, all schools, public and nonpublic, would be forced to provide the quality education parents seek for their children, or they would be forced to close because of lack of students and money.

No, tuition tax credits will not encourage greater segregation. On the contrary, they will help equalize the ability of families to exercise their rights in education and to demand accountability. The greatest discrimination against the poor and minorities now in education is that fostered by our method of educational financing which has penalized the basic human right of educational choice into a privilege dependent on wealth.

But to get back to our opponents - it would seem that they do not want to enlarge the citizens' ability to choose, for fear that it would destroy public schools. What an anomaly! this suggests that they consider the public schools to be so poor that parents would flee in droves if given even a fraction of tax relief. Yet regardless of the quality of education there received, they still would prefer to lock all children, especially the poor and minorities, into public schools, ostensibly on the supposition that money and pressure would then force the government schools to improve. But that is contrary to human nature and human experience. Competition and freedom, not monopoly, fosters quality and accountability, and human rights are certainly more sacred than government institutions, or the vested interests of a well entrenched public education bureaucracy.

It is truly amazing that those who would make public schools sacred have so poor an opinion of them. On the other hand, we who promote freedom and competition beleive that our public schools can and do compete, and that those schools, whether public or nonpublic, which provide good education will not find any loss of students due to the justice of tuition tax credits.

But still opponents of tuition tax credits claim, standing on the platform that public schools are free for everybody, that if parents wish to choose otherwise, they should expect to pay for it. After all, if government provides public swimming pools, we don't expect it to pay for someone's private pool also. In response, we would point out that because government has made education compulsory and taxed all to support it, we have become acquiescent to the myth that therefore government has the right to determine the education of the child and demand attendance at a government school as a condition for citizens receiving tax benefits. Would we, or have we accepted this condition in other welfare benefits, such as social security, general assistance welfare or medicaid? Most definitely not! Education is the only welfare benefit in the United States which demands acceptance as a condition for receiving benefits - and this violation of dignity and freedom is all the more onerous because education is compulsory and because the very nature of education thrusts it to the heart of freedom of mind and heart. Again we repeat that the child belongs to the family, not to the state. Education is the most basic and pervasive means of developing and molding the child, and therefore education is the fundamental right of the family, with the state having the responsibility of protecting that right, not penalizing it.

As to the analogy of swimming pools, we can only shudder that public educators would identify swimming with education. Is swimming compulsory? Does it relate to the total development of the child? Is it pervaded with philosophy and judgments and does it affect moral and religious values? It is really inane to compare the right of parents relative to swimming to the basic human right of parents over the education of their children.

There are so many facets of this issue - so many questions raised yet so many reasons for passage of tuition tax credits. It is a temptation to go into all of them, but that would be repetitious because certainly others testifying will bring you copious facts and figures along with their strong support of $2673. And so as you, the honorable members of the Senate Finance Committee, ponder, discuss and make decisions relative to tuition tax credits, we in CEF urge you to remember that this is not an issue of public versus nonpublic schools, nor of church versus state. Rather it is truly an issue of equity for citizens, of civil and religious liberties for families, of parental rights in education, and of quality education with liberty and justice for all children.

We therefore urge you to support passage of S2673 NOW in this 97th Congress.

Submitted by

Marilyn F. Lundy, President
National Citizens for Educational Freedom

The **Chairman**. We have another vote in progress, but Senator Durenberger wanted to be here before this panel left. If you wouldn't mind waiting a few minutes, I think he is on his way now and may be here before I leave.

Then I would like you to wait for Senator Packwood, who may have questions, because he has been here throughout the day.

One thing we have heard a lot about here recently is the flat rate tax. It seems to me that we have some people talking about a flat rate tax, and this, of course, would put another bump in the road on a flat-rate tax if you are talking about either credits or a deductions. It might be a matter of some concern. This committee starts hearings in September on the flat rate tax. There are a number of proposals introduced; some aren't very flat. They are called flat rate because that seems to be the popular phrase right now.

This is a matter that you might have some concern about or some interest in, because a pure flat rate tax would eliminate credits and deductions, in most cases exemptions. Certainly, unless there was some exception made, your gains might be short-lived.

If I can just ask you to wait just a couple of minutes, when Senator Durenberger arrives he may have questions of the two Minnesotans. Senator Packwood may have questions for the entire panel.

Thank you.

[Whereupon, at 2:08 p.m., the hearing was recessed.]

AFTER RECESS

Senator **Bradley**. I will call the committee to order in my capacity as a minority member of the committee who misses the opportunity to call committees to order on a more regular basis. [Laughter.]

While we are waiting, I think, for Senator Durenberger, I would like to just take the occasion to ask a few questions about some of the experience in Minnesota.

In your view, should Federal tuition tax credit legislation duplicate the Minnesota Legislation?

Mr. **O'Neill**. Mr. Chairman, Senator Bradley, actually it was interesting for me this morning to hear the very necessary and good discussion on the civil rights problem and also on the refundability.

In Minnesota we did it very simply. First of all, we had a refundability in our income tax credit law, and in Minnesota all we did for both the income tax credit law, which was in existence for 3 years, then the income tax deduction, which we have had in effect from 1974 to the present and which was just sustained as constitutional by the eighth circuit, we had just three tests: First, that the school be nonprofit; second, that it meet compulsory school attendance law in the State of Minnesota; and third, that it adhere to the Civil Rights Act of 1964.

To my knowledge, both as a member of the legislature and as a person who has been intimately involved in this legislation over the last 14 years, we have never had a single cause for any complaint that anyone was not adhering to the Civil Rights Act of 1964.

So, I do think there are some very necessary reasons for Senate File 2683 going into the detail they do, but Minnesota's experiment with the income tax credit has been a good one, has not ended in a flight from the public schools—just the contrary. And I think there are a number of good features of that law which should be applied and are applied in this measure as it is at the present time.

Senator **Bradley**. Secretary Bell made the point that in Minnesota there had not been a flight from the public schools. Can any of you speak with any more specificity about that and whether you think the problem of constitutionality and later change of the law had affected that? Or do you think that in fact there is a legitimate base of experience there from which to extrapolate about the effect that a Federal law might have on public education?

Mr. **O'Neill**. Mr. Chairman and members of the committee, my remarks do include exactly those.

Senator **Bradley**. I'm sorry. I missed your remarks.

Mr. **O'Neill**. They do lay out the student enrollment, numbers of schools, and numbers of teachers during the 3 years the income tax credit law was in effect in Minnesota. And what they show is that, although student enrollment as a whole was declining in Minnesota, about 30,000, that in truth and fact during the period of time the income tax credit law was in effect public school enrollment increased slightly, and non-public-school enrollment dropped from 106,000 to 94,000.

The Minnesota experiment, I think, will show that it merely stabilizes the situation and that the income tax credit which was in existence in Minnesota for those 3 years merely stabilized and allowed the parents to exercise their freedom of choice and provide for the diversity. So I think those statistics are good, and they are available. I have laid them out in my remarks.

Senator **Bradley**. Do you personally, because the Minnesota experience has been so positive—there might be those who say, "Yes; well that's in Minnesota," and one would not expect, although one would not be certain, but one would not expect that Minnesota would be the State in which there would be segregationist academies established—do you have any concern about this legislation on a national basis? Were you here today when the Secretary of Treasury testified?

Mr. O'**Neill**. I was.

Senator **Bradley**. Did you feel that he had carefully enough thought through the antidiscrimination clauses of the bill? If you prefer not to comment on the Secretary of the Treasury, let me hear your views on the antidiscrimination clauses of the bill.

Mr. O'**Neill**. Well, as I indicated, the antidiscrimination clause in Minnesota was a very simple one, and we have never had any problem with it. I am sure it could be pointed out that perhaps Minnesota is somewhat different; but, as a lawyer myself, and as a person who has been involved in this type of matter for the last 12 years, in going over the bill I think there are some adequate protections that are placed in there on the antidiscrimination, and I think they are a very legitimate concern of members of the committee. I hope it's tight enough so that the members of the committee can indicate that it does have their approval, because I certainly wouldn't want any of you to support a bill that did not have a very strong provision, similar.

Senator **Bradley**. As someone who has been involved with this for the last 10 years and someone who has read the administration's bill and also Senator Packwood and Senator Moynihan's bill, if you were to make one suggestion, what suggestion would you make to strengthen the antidiscrimination provisions?

Mr. O'**Neill**. Well, the only thing would possibly be an expedited hearing or appeal, a way in which you could have an expedited declaratory judgment action, and I think that would be something you might want to consider, Mr. Chairman and members of the Committee. But I think the provision is very strong as it is at the present time in the bill.

Senator **Bradley**. Could you go into that? Now, you say an "expedited hearing or appeal for a declaratory judgment," that there has been discrimination?

Mr. O'**Neill**. Yes, Mr. Chairman. Maybe Mr. Murren or Professor Katz could better respond to that.

Senator **Bradley**. I am addressing the questions generally to the panel. I hope you don't feel, Mr. O'Neill, that I am just trying to put the question to you.

Mr. O'**Neill**. No, I'm glad to try to respond. A declaratory judgment action takes precedence under Federal law at the present time, over every other procedure, and it may be that the bill could indicate an expedited way in which for that law to be considered by the courts in a quicker fashion than even is laid out in the bill; although, as I say, I think the bill as it is at the present time is sufficient to take care of that problem.

Senator **Bradley**. Mr. Katz?

Professor **Katz**. Well, I think our position is that the bill does have reasonable protections. Of course, it does bottom on the dependence of the good faith of the Attorney General of the United States. And I have no doubt that he, whoever he or she is now or later, will proceed as expected.

Expediting the review of a particular school against which a charge is brought would strengthen the confidence of you and others, I assume, in fulfilling the purposes of the bill at being antidiscrimination. That would be one avenue of strengthening it.

Mr. **Murren**. Senator, if I may, I would add that an expedited declaratory judgment proceeding would certainly be a favorable inclusion in the bill, because we don't want the parents to be under a cloud through the whole court procedure. The parents want to know: Is my tuition going to be credited or not? And I think that anything that relieves the anxiety of the parents would be beneficial.

Senator **Bradley**. So you come at it from a slightly different point of view. You say that a declaratory judgment procedure would be best because without it parents might feel that the validity of their tax credit would be in jeopardy because the school was indeed discriminating?

Mr. **Murren**. Because the school was suspected of discrimination or charged with discrimination—not yet adjudicated, but only charged.

Professor Katz. And it is only until the final adjudication that the loss of the tax credit would be clear; so that, through the process of appeals the parents would be in a position of doubt. By expediting the entire proceeding, it would clarify that doubt and would also strengthen the enforceability of it.

Senator **Bradley**. Well, I thank you very much for your suggestions. They go to the heart of one of my concerns. Thank you.

Senator **Durenberger**. Senator Packwood?

Senator **Packwood**. No questions.

Senator **Durenberger**. Let me thank the panel for their presentation and apologize for not being here much earlier in the day.

Without the benefit of the testimony of the witnesses from Minnesota, let me say that Senator Bradley raises a point that has been often raised since I have been in the Senate, and that is that I brag about how easy the State is to represent because it is usually on the cutting edge of public policy change in a wide variety of areas; and then, maybe as an excuse for lack of progress here in adapting to what we might have adopted there, people say, "Well, it may work in Minnesota, but it isn't going to work anywhere else."

One of the things in this area, of course, that bothers us a great deal is the commitment of the Nation to public education. I can speak from experience, but I guess it would be better if one of the Minnesota witnesses did—maybe former Senator O'Neill because of his experience in the legislature, if you haven't already covered this area, Joe—to the issue of the Minnesota tradition and the Minnesota commitment to public education.

Before I arrived here we had for 2 years a Senator from Minnesota who had been a Governor. During his 6 years, I guess, as Governor, he performed what was called the Minnesota Miracle which in large part was a major financial commitment to public elementary and secondary education in our State, and before that a variety of things.

Perhaps, Joe, you might speak in response to: Is Minnesota unique to the issue of the cocommitment to elementary and secondary education in public policy in the State of Minnesota?

Mr. O'NEILL. Well, Mr. Chairman and Senator Durenberger, I have attempted to do some of that in my remarks, but let me just state that I think there are very few States that spend more per capita on a local and statewide basis for education than Minnesota. Statistics will show that.

During this period of time of the income tax credit, we really basically budgeted $21 million out of a budget of over $2.7 billion for the income tax credit proposal, for 10 percent of the student body in Minnesota going to nonpublic schools and their parents.

At that same time we were appropriating about $1.1 billion for public education. During the period of time of this, that's roughly a little less than 1 percent of our total budget that was in this tax credit and roughly a little less than 2 percent of the education dollars that were being spent in Minnesota.

In the 1973 biennium the budget increased from $2.7 billion to $3.7 billion, in other words a $1 billion increase. During that period of time we went from $21 million for the biennium to $22 million for the biennium; and the education dollars for public education in Minnesota, although the enrollment was declining slightly, went from $1.1 billion to $1.3 billion.

The point that Senator Durenberger makes, and I think it is a valid one, is that just because we provided a limited program of income tax credit for the nonpublic schools in no way lessened the tremendous commitment that all of us felt for public education, and in fact we increased the public education dollars during this exact time. And you will find that in the last 10 years we have continued to do that, during a time of declining enrollment and a very miniscule low income tax deduction law for parents who send their children to nonpublic schools.

Senator DURENBERGER. Thank you very much, and I thank all of the members of the panel for their presentation today.

[Pause.]

Our next panel consists of Donald Cameron, assistant executive director, government relations, national edcuation association; R. G. Puckett, executive director, Americans United for Separation of Church and State; and Rev. Robert F. Drinan, president, Americans for Democratic Action—if they are still with us.

I can tell by your uniform that we have a substitute for Bob Drinan today.

Shall we proceed in the order of introduction with Mr. Donald Cameron?

STATEMENT OF DONALD CAMERON, ASSISTANT EXECUTIVE DIRECTOR, GOVERNMENT RELATIONS, NATIONAL EDUCATION ASSOCIATION, WASHINGTON, D.C.

Mr. CAMERON. Thank you, Senator.

Mr. Chairman, members of the committee: I am Don Cameron, the assistant executive director of the National Education Association, the Nation's largest association of teachers and other school employees, representing 1.7 million members.

We appreciate the opportunity very much today to speak our abject opposition to S. 2673, the Educational Opportunity and Equity Act of 1982.

After being here since 9:30 this morning, I am reminded of the old story about the comedians club, where the jokes were so well known that they just gave numbers and everybody laughed appropriately. And we might shout out those numbers here if it wasn't so serious a matter.

On the other hand, I think it is important that we state, for the record and for the people assembled here, what our positions are and why they are, even though they may be well known and some of us, as stated earlier, have been here before.

The NEA is unalterably opposed to tuition tax credits for any level of education—kindergarten through graduate school. NEA believes that tax subsidies for nonpublic schools through tax credit are bad economic policy, poor public policy, bad educational policy, and certainly unconstitutional.

At a time when the administration is calling for draconian cutbacks in aid to public education, it is proposing a tax scheme which, in effect, transfers those much-needed funds to the private and parochial schools of this Nation.

Tuition tax credits would cost American taxpayers billions of dollars in lost revenue over the next 3 years, and we are not very sanguine about the administration's estimates about the revenue that will be saved and/or generated as a result of the bill before us.

The great paradox of this proposal is that it would benefit 10 percent of America's students, mainly from middle- and upper-class families, at a time when the administration has attempted to take huge chunks of Federal aid from the other 90 percent.

This administration's cutbacks in aid to elementary and secondary education programs have hit hard at schools enrolling substantial numbers of children from impoverished families, but they are also affecting every kind of student, every school district, and every teacher across the land. We do not see a similarity in situations between this administration's attitude toward the public schools and the attitude in Minnesota as expressed by the distinguished panelists earlier and by yourselves.

Tuition tax credits would, in effect, provide private school students 2½ times the Federal support currently given public school students; yet, it is the public schools that have the legal obligation to educate all children, regardless of their skills, their abilities, their handicaps, and regardless of whether or not they are bound for college.

While the administration has touted the strong civil rights provisions of the Educational Opportunity Equity Act, the NEA concurs with the findings of the Lawyers Committee on Civil Rights and several of you, many in this audience, that the assurances in the bill are weak and difficult to enforce. We have grave concerns in this area.

Finally, the NEA must speak out against tuition tax credits on constitutional grounds. The Supreme Court has consistently struck down tuition tax credits and other indirect public subsidies to nonpublic schools. The NEA has fought long and hard to sustain the first amendment's guarantees regarding the separation of church and state. This tax scheme would threaten those guarantees.

While we have great respect for the opinions of those who differ from us, I must inform you that the NEA will continue to work adamantly against any form of tuition tax credits—this bill, or any other.

The NEA urges the Finance Committee to reject S. 2673 and any other similar tuition tax credit proposal.

Thank you, Mr. Chairman, and thank you, members of the committee.

Senator **Durenberger**. Thank you for your presentation.

Mr. Puckett? Oh, I'm sorry. Mr. Menendez.

STATEMENT OF ALBERT MENENDEZ, DIRECTOR OF RESEARCH, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, SILVER SPRING, MD.

Mr. **Menendez**. Members of the committee, my name is Albert Menendez, and I am director of research for Americans United for Separation of Church and State. I've been called in off the bench here as a substitute. Our executive director, Rev. R. G. Puckett, was unavoidably called away, and I am substituting for him. I know it is late, and I will try to make my remarks as brief as possible.

We appreciate the opportunity to address the Senate Finance Committee on S. 2673, and we urge that you reject the bill.

Americans United is a 35-year-old organization dedicated solely to the preservation of religious liberty, through the separation of church and state, and the provisions of the first amendment as written. We represent in our membership members of all religious and political opinions, both liberal and conservative, individuals of all religious faiths and traditions including those who did not choose to participate in any religious community. We are concerned solely with the preservation of religious freedom.

Sometimes I think Americans United gets a bum rap. We are not opposed to religion; we are not hostile to religion; we cherish religious values; we cherish religious diversity. It is for that reason that we oppose any subsidies of religious education or any entanglement between church and state. It is this deep concern of ours that has prompted our testimony here today.

There are serious constitutional problems with S. 2673, and they have been dealt with adequately here.

We feel that there is no secular legislative purpose, that legislation should not inhibit or enhance religion, and there should be no excessive entanglement between church and state. The courts have held this repeatedly in a remarkable series of cases developed over

35 years, and we feel that doctine adequately represents the genius of the American experience. We want to see that sustained.

The genesis and promotion of this bill represents a confluence of religious and political interests. The Supreme Court wisely ruled in 1971 that:

> Ordinarily, political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the first amendment was intended to protect.

The Court dealt with questions of parochial school aid on a State level. It considered cases from a number of States that have been dealing with this issue for 25 years, and it ruled that this type of conflict inevitably led to interfaith division and disharmony.

We believe that this bill could so entangle religion and politics that two centuries of progress in first amendment rights to religious liberty and the separation of church and state could be unalterably reversed.

Furthermore, to deny that denominational elementary and secondary schools do not discriminate by religion is to deny their very purpose—to remain religiously homogeneous. Giving public funds to such schools through the tuition tax credit proposal would result in Federal Government subsidy of sectarian division and divisiveness in education, and the result of this could only be a decline in interfaith and community harmony.

One aspect has disturbed us in this bill. In discussions of nondiscrimination—the discussions of discrimination along color, race, and nationality lines, which is quite proper—we are concerned that there is no discussion of religious discrimination in this particular bill.

Now, we are opposed to the bill, and we hope you will reject it, and, even if it is passed, we believe it will be held unconstitutional; but we feel that you should consider the whole question of religious discrimination are different in private and religious schools from those of public schools.

It is a matter of public record that within the last school year, three major cases of discrimination in church-related private schools have come to the fore. They may be adjudicated.

In a case in Ann Arbor, Mich., a teacher in the theology department of a church-related high school was fired, though he had taught there for 9 years, because he chose to have his daughter baptized in a faith different from the faith of the school.

In Danville, Ill., a student was dismissed from school because her parents did not attend religious services regularly.

In California, a religious school fired a principal because he was considering the hiring of two teachers of another faith.

We feel this question must be considered, and we believe that as religious liberty is central to the American experience, this bill will substantially violate that freedom.

Thank you.

Senator **Durenberger**. Thank you very much.

Mr. Edelstein?

STATEMENT OF MITCHELL H. EDELSTEIN, LEGISLATIVE REPRESENTATIVE, AMERICANS FOR DEMOCRATIC ACTION, WASHINGTON, D.C.

Mr. **Edelstein**. Thank you, Senator.

My name is Mitchell H. Edelstein. I am legislative representative for Americans for Democratic Action, a political-action organization with members across the Nation.

I would like to thank you for this opportunity to testify before your committee. ADA President Robert Drinan is unable to be here today. With your permission, I would like to summarize my testimony and ask that it appear in full following my statement. Thank you.

ADA opposes any legislation which would provide tax credits as a way of financing education. Tuition tax credits should be opposed on principle as bad public policy and bad education policy.

Enactment of tuition tax credits would produce an uncontrollable tax expenditure, estimated to exceed $2 billion yearly, without assurance that private schools would not take advantage of this program and simply raise tuition costs.

At a time when drastic and unconscionable cuts have been made in the Federal programs which provide aid to education, nutritional support for our children, and basic health care, this country cannot afford a program that provides financial support without accountability for the dollars provided.

No matter how the proposals for tuition tax credits are revised or revamped, these tax credits would benefit less than 10 percent of U.S. families with children attending elementary or secondary school. And because the tax credit envisioned under S. 2673 is not a refundable tax credit, only those families who pay sufficient taxes would benefit from this credit.

Despite the three provisions written into S. 2673 designed to insure that "this legislation should not be used to promote racial discrimination," ADA believes that it would be impossible to prevent tuition tax credits from benefiting schools that blatantly discriminate on the basis of race.

The first provision is for an annual sworn statement declaring that such institution has not followed a racially discriminatory policy during the calendar year. At this time it is still not clear who will swear to this statement. Will it be the chief executive officer, the board of trustees, or the secretary of the corporation on behalf of the corporate entity? Who will be prosecuted for perjury? And, given the limited resources we all acknowledge, what other important functions of the Justice Department will be set aside so that these cases can be pursued?

The majority of private elementary and secondary schools do not discriminate on the basis of race. These schools would have no problem in filing the required sworn statement. Unfortunately, the schools that do discriminate would have no problem either.

The second provision authorizes the Attorney General to bring declaratory judgment suits. The declaratory judgment process is fraught with diversion and delay. To bring suit requires a specific act of discrimination against an individual under a racially discriminatory policy. The Attorney General is then authorized, "upon finding good cause," to bring an action against the educational institution. The Attorney General is required to notify the institution concerned about the allegations and to allow the school to show that the alleged discriminatory policy does not exist or "has been abandoned," even though the institution has previously sworn that it does not discriminate.

The third provision is a continuation of current IRS policy which prohibits granting tax exemptions to schools which discriminate on the basis of race. This policy has been the source of recent controversy, and the Reagan administration most likely will be arguing before the Supreme Court that this policy is not authorized by law.

Finally, all of these policies require an overall administration commitment to civil rights. ADA believes that the Reagan administration has shown on many occasions its lack of commitment to civil rights.

Therefore, we find the provisions of S. 2673 that are intended to prevent educational institutions from discriminating on the basis of race to be totally inadequate.

In conclusion, Mr. Chairman, we believe that this plan would incur great costs, encourage schools to raise tuition, increase government regulations, create a divided educational system, and benefit schools that discriminate on the basis of race.

Thank you. I would be pleased to answer any questions.

Senator DURENBERGER. Thank you for your presentation.

[The prepared statements of the previous panel follow:]

STATEMENT OF DON CAMERON, ASSISTANT EXECUTIVE DIRECTOR, NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and Members of the Committee:

The National Education Association--the nation's largest organization of teachers and others in the field of education--appreciates the opportunity to testify in total opposition to S.2673, the Educational Opportunity and Equity Act of 1982. The American Association of State Colleges and Universities joins in our statement today.

NEA's policy positions on tuition tax credits and other schemes to provide public assistance to private schools are attached. These policies have been adopted by the annual NEA Representative Assembly, the organization's policy-making body of 7,000 delegates elected in each local and state affiliate in all 50 states, D.C., the overseas dependents schools, and Puerto Rico.

The National Education Association is unalterably opposed to, and will combat with all the resources at our command, tuition tax credits for any level of education, kindergarten through graduate school. NEA believes that tax subsidies for nonpublic schools through tax credits are bad economic policy, poor public policy, and unconstitutional.

We particularly object to the proposal before this Committee and the indecency of entitling a special interest piece of legislation for a very few of our better-off citizens a piece of "equity legislation." We object to legislation in Congress which speaks of "equal opportunity" and aids 10 percent of America's school children in private school while 90 percent of her children--the disadvantaged, language deficient, handicapped, and others wanting a quality education--are denied the funding necessary to fulfill a dream of equity and equality.

We believe that America must have high quality tuition-free public schools which allow all children to reach their full potential. The Reagan Administration has shown no support for public education as it has proposed massive cuts in programs. The only initiative has been to further undermine public education through an expensive scheme to underwrite a dual school system. Through this legislation it proposes a new and costly tax burden on the elderly, single persons, and the vast number of citizens who have no children in school--public or private. They must pay taxes for a public school system and for a system of private schools to provide public subsidies for private choices.

We presume that this Committee will see further Administration proposals to undercut vital public services and add to the tax burden of citizens by providing public dollars for private purposes--perhaps a swimming pool tax credit for those who don't wish to go to public pools; or perhaps a transportation tax credit for those who use their car rather than public transportation.

NEA believes that choice and diversity must exist in education as in other sectors of the life of citizens. Government should, of course, raise public funds for public purposes. But we disagree fundamentally and completely with the proposal by which that government would raise public funds and use them for private purposes outside of the purview of elected officials.

ECONOMIC POLICY ISSUES

The Administration proposal for tuition tax credits must be viewed against the current climate for education. Is a program costing $4 billion (see attached chart) over the next three years an investment in our economic growth? Will it stimulate the economy, decrease inflation, increase productivity, or aid the national defense? The answers are clearly no.

This piece of legislation, coyly described in Section 6 as not financial assistance to educational institutions or recipients, costs five times the cuts made in public and private elementary and secondary education funds.

Under the 1981 Omnibus Reconciliation Act, total federal spending for elementary and secondary education will decline from a 1981-82 level of $5.61 billion to $5.3 billion in 1982-83. While the Administration proposed much heavier cuts, this loss of $331 million, a drop of about six percent, follows a reduction last year of $472 million--about eight percent below the previous year. The shrinkage of federal assistance has hit especially hard at schools enrolling substantial numbers of children from impoverished families, but the cuts have been across-the-board, affecting adversely every kind of student, every school district, and most teachers. As the attached chart on state financial conditions indicates, there is insufficient money at the state and local levels to make up the slack. Targeted federal education programs were enacted to meet national goals of equality of opportunity when the states were unable, or perhaps unwilling, to start and sustain them.

The Reagan Administration's tuition tax credit proposal provides a massive subsidy for those parents who already have children in private schools and does nothing to improve the quality of educational services in either public or private schools. The federal government will forego billions of dollars of revenue and the American society will receive nothing in return--hardly sound economic policy.

The $4 billion tuition tax credits over the next three years would be automatically lost to the Treasury. They would be non-stimulating credits which would not generate one dollar's worth of new revenues. In future years we can expect the cost to escalate as pressure builds to extend the benefits to college students and additional parents claim the credit and clamor to increase the amount. NEA views the tuition tax credit scheme as totally inimical to the goal of the President, the Congress, and the public to reduce inflation. Any tax credit subsidy of private schools must be weighed against the Administration's call for fiscal restraint.

Proponents of tuition tax credits for private schools claim that these subsidies are necessary to relieve them of the burden of "double taxation." NEA supports the right of these parents to choose--and to pay for--their children's education in nonpublic schools. The "double taxation" argument is a red herring. All citizens pay taxes to the local, state, and federal governments to finance programs which promote the general welfare--whether or not an individual taxpayer is in need of or eligible to receive the services. We pay for the construction and maintenance of streets and highways whether or not we drive. We pay taxes to support the American system of tuition-free public education, whether or not we are the parents of school-age children--and we all benefit from having an educated, employable citizenry as a result. Enactment of tuition tax credit subsidies for nonpublic schools would in fact be dual taxation. All would pay taxes to support public education, and all would pay taxes to subsidize a privilege affordable and available to a very few.

PUBLIC POLICY ISSUES

Economically the tax credit proposal would be a disaster that is matched by the educational effects. Tuition tax credits would, in effect, provide to those students in private schools two and one-half times the amount of federal support given public school students.

Under proposed legislation, tax credits could amount to $500 per child. The federal government contributes nowhere near $500 per child for those enrolled in the public schools. In fact, before the massive budget cuts in education, $160 of the current average per-pupil expenditure in public schools came from federal sources. Through revisions in federal legislation, private schools are receiving increasing amounts from federal sources currently at the rate of about $50 per pupil.

The private school tax credit of $500 would benefit the parents of five million students. The parents of the forty million students in public schools would receive no such tax benefit.

The attached chart ranking the states by a ratio of public to private school students also shows how various states and regions of the country with a concentration of private schools would greatly benefit from tuition tax credits while other states, with few private school students, would receive little aid from the tax scheme.

In addition, it would be a gross distortion of the American dream if Congress aided private-sector education while failing to support public education, if Congress supported privileged children at the expense of all children and fiscally undermined public education. A tuition tax credit subsidy for private schools would have this effect.

Until the enactment of this budget, the federal government was contributing a miniscule eight percent of the total cost of public education. The enactment of a tuition tax credit subsidy for private schools, with its revenue loss of at least $4 billion over the first three years, will surely force Congress to cut back on its contribution to public education. According to the testimony of Assistant Secretary John E. Chapoton before the House Education and Labor Committee, that $4 billion loss will likely come from existing education programs. That is fiscal reality.

Proponents of tuition tax credit subsidies to nonpublic schools estimate that 62.7 percent of credit recipients would have family incomes of under $20,000. Available census data, however, not only fail to confirm that estimate, but also show an interesting contrast between family income levels of public and nonpublic elementary and secondary students.

Percent of family income under $20,000
(1982 median family income = $21,000)

	Enrolled in Public schools	Nonpublic schools
Elementary students	71.2%	54.5%
Secondary students	61.6%	39.9%

Proponents of tuition tax credits argue that all parents would have the option of tuition tax credits and therefore would be eligible to receive the same tax break. This is a specious argument. The "choice" provided by tax subsidies for private schools would not be available and accessible to the majority since the actual cost of private school tuition is prohibitive to many. The real tax break will be for the middle and upper income parents who can afford to pay the balance of the tuition bill--that not subsidized by the tax credit. Most private schools require "up front" tuition payments in the fall. A tax credit applied to an April tax bill will not assist lower and middle income parents to participate.

The tuition tax credit proposal does not have a refundability provision. In order to receive the full allowable credit, a taxpayer must have an income tax liability equal to or exceeding the amount of the credit. This means that many low income families would not be able to benefit from the credit even though they might have children in nonpublic schools.

The public schools are obligated to enroll and to educate all comers regardless of innate ability, handicap, proficiency or deficiency in

English. The argument of proponents that fair and healthy "competition" would result from tax credits ignores public policy of long standing. The public schools must educate all. They have never been designed, nor should they be, to compete on an equal footing with schools with discriminatory enrollment policies.

Private schools are not mandated to accept children who are handicapped, have discipline problems, or are otherwise difficult to educate. In fact, only about 2.7 percent of all religious schools provide programs for the handicapped and only three percent of all nonpublic schools offer vocational education.

Tax credits, as a federal policy, would promote the success of private schools, allow special benefits through taxes for wealthier families, and undermine the support of public schools through an unfair and unwise competition. The result would be an educational caste system. It is not inconceivable that the elite private schools and the disadvantaged public schools will increasingly amount to a separate and unequal dual education system in the United States.

Ironically, at a time of considerable conservative clamor for less federal involvement in education, tuition tax credit subsidies for private schools will force the federal government to evaluate and regulate private schools. Since tax credits would be given for private school tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made.

The federal government cannot launch a new multi-billion dollar subsidy program without accompanying regulations and minimum standards. Probably through the IRS, the federal government will have to judge the legitimacy of a school benefiting from this new indirect subsidy. Anything less than a careful scrutiny and regulation of recipient private schools would leave the federal government open to legitimate complaints regarding the utilization of the taxpayers' tax dollars. To ensure that carelessly granted tax credits not become an additional burden on those paying taxes, the federal government will have to empower an agency to prevent fraud and abuse of the tax credit.

Certain fringe groups which might be encouraged to set up schools have the Constitutional right to free speech and freedom of association. Never before, however, have they been eligible to operate a school and receive a federal subsidy. Nor should they become so.

Local taxpayers and their local school boards are held accountable for how tax dollars are spent in the public schools. Taxpayers would have the right to demand the same accountability from private schools benefiting from the federal subsidy provided by tuition tax credits. We view such scrutiny as inevitably running afoul of the "excessive entanglement" test in the Supreme Court's Lemon v. Kurzman decision.

CIVIL RIGHTS IN JEOPARDY

Civil rights are placed in jeopardy under this bill. Almost one-half of the Administration's tuition tax credit bill is devoted to trying to provide assurances that the tax relief afforded would not be used to promote racial discrimination. But on close examination and in concurrence with the brief from the Lawyers Committee on Civil Rights we believe these assurances are far less than warranties.

- The bill permits a tuition tax credit only for portions of amounts paid as tuition to one or more educational institutions which are exempt from taxation under Sec. 501(c)3 of the IRS code. Yet nothing in the bill permits IRS to take action against a school that does, in fact, practice racial discrimination; under the bill, only the Attorney General may undertake enforcement activity.

- Under the bill, a school seeking to have the parents of its students enabled to claim a tuition tax credit for payments made to it must file a sworn statement to certify it has not followed a discriminatory policy during the preceding year. The language is vague as to who would pay fines or go to jail if evidence of racially discriminatory practices were found to be practiced at the school.

- Under the bill, the Attorney General would be authorized to bring declaratory judgment suits to establish that a school in fact follows racially discriminatory policies. But the provisions establish a highly complex set of circumstances with little promise of effective relief, especially given the ineffective performance of this Administration in the civil rights arena.

There is no substitute for direct, unequivocal statutory language to prevent racial discrimination. The language in this bill is anything but direct and unequivocal. And it should be rejected.

There is one more important point in determining public policy and that is what the voters think. When state aid for nonpublic schools has been put before the voters in statewide referenda conducted over the last fifteen years, such schemes were overwhelmingly rejected, as detailed below.

STATE	YEAR	VOTE AGAINST AID	VOTE FOR AID
New York	1967	72.5%	27.5%
Michigan	1970	57 %	43 %
Nebraska	1970	57 %	43 %
Maryland	1972	55 %	45 %
Oregon	1972	61 %	39 %
Idaho	1972	57 %	43 %
Maryland	1974	56.5%	43.5%
Washington State	1975	60.5%	39.5%
Missouri	1976	60 %	40 %
Alaska	1976	54 %	46 %
D. C.	1981	88 %	12 %

CONSTITUTIONAL ISSUES

NEA has long fought to protect the First Amendment's guarantees regarding the exercise of religion free from governmental influence.

We were a founding member of the National Coalition for Public Education and Religious Liberty (National PEARL) and believe that subsidizing at federal expense certain groups of individuals so that they may exercise their religious preferences would have the effect of advancing religion in violation of the First Amendment.

A long line of Supreme Court cases in recent years has dealt with the constitutionality of various methods of providing aid to nonpublic elementary and secondary schools. The court has consistently struck down provisions which either directly or indirectly have the effect of advancing religion and offsetting the constitutional provisions for separation of church and state.

The *only* forms of "aid" which the Court has found to be consistent with the First Amendment are those which provide general welfare and health services, textbooks, and transportation to *all* children. In a recent opinion, *Wolman v Walter*, 97 S. Ct. 2593 (1977), the Supreme Court was careful not to extend this doctrine beyond its previous decisions and indicated that when faced with the question of expanding nonpublic aid or of prohibiting it, prohibition should be the favored course.

The unconstitutionality of the tuition tax credit scheme for elementary and secondary nonpublic schools is without question in light of the Supreme Court's ruling in *Committee for Public Education and Religious Liberty v Nyquist*, 413 U.S. 756 (1973). The Court in *Nyquist* found that a New York statute providing income tax benefits to parents of children attending nonpublic schools is a violation of the First Amendment in that it would have the "impermissible effect of advancing the sectarian activities of religious schools."

Although the New York statute was perpetrated under the guise of "tax deductions," rather than tax credits, the Court saw no distinction in the labels and indicated that regardless of the name, its effect was unconstitutional. (Whether you call it a tax credit, tuition reimbursement, or tax deduction, the account books look the same and the effect is the same.)

Supporters of tuition tax credits contend that the First Amendment is not violated since the tax benefits adhere to the parent of the nonpublic school child, not to the private school itself. But the Supreme Court in Nyquist specifically rejected this argument and found that the effect of the aid is "unmistakably to provide desired financial support for nonpublic, sectarian institutions."

For these reasons, the National Education Association urges the Finance Committee to reject S. 2673 and any other similar tuition tax credit proposal. In our view, the needs and promises of public elementary and secondary education are of primary importance, and the energies of government are best used in broadening the scope of opportunity.

Attached to this testimony are the official policy statements of the National Education Association as adopted or reaffirmed just last week by the annual Representative Assembly.

APPENDIX - 1

COST ESTIMATES OF REAGAN ADMINISTRATION TUITION TAX CREDIT BILL

Year	Est. Non-Public Enrollment	Maximum Credit	Average Credit	Est. No. Eligible For Credit	Est. Total Cost
1983	5,200,000	$100	$100	4,900,000	$ 490 million
1984	5,720,000	300	300	5,320,000	1596 million
1985	5,980,000	500	400	5,560,000	2224 million
					$4310 million

Median Catholic School Tuition, 1981-82	$378
Independent School Tuition, 1977-78	$500-6250

Est. Avg. Tuition Charge

1982	$597
1983	645
1984	709
1985	787

Source: National Coalition for Public Education, 1982

CAN THE STATES PICK UP THE FINANCIAL SLACK?

Key Facts that Figure in the Future: State Surpluses/Deficits, Tax and/or Expenditure Limits, Tax Structures, and Tax Efforts.

	STATE SURPLUS/DEFICIT (millions)						TAX and/or EXPENDITURE LIMITS				St. Income Tax Linked to Fed. Tax	No Broad-Based St. Income Tax	No General Sales Tax	Tax Effort Index	Over or Under ( ) Utilization (thousands)
	Current Receipts/ Expenditures			Total Resources/ Expenditures				Local							
	FY 80	FY 81	FY 82	FY 80	FY 81	FY 82	State	Assmnt. Increase	Prop. Tax Levy	Rev./Exp. Limit					
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Alabama	2	−14	4	18	0	0								85.8	−361003
Alaska	1335	−1163	−350	2194	1031	681			CM			X	X	154.7	419001
Arizona	77	−171	−93	234	119	23	Const.	CMS	CM	CMS	C			107.9	170037
Arkansas	146	101	26	1	0	0			CMS					81.9	−274488
California	549	−2142	221	2541	29	0	Const.	CMS		CMS				95.5	−1043178
Colorado	−12	−205	13	261	60	70	Stat.		CM		C			96.0	−111569
Connecticut	2	−35	0	0	−35	0						X		102.8	81419
Delaware	9	−15	0	40	22	18	Const.		C		C		X	95.6	−25043
Florida	−15	−210	−349	654	531	397						X		77.0	−1881213
Georgia	25	−93	−66	159	66	0					C			93.4	−249081
Hawaii	108	7	37	179	187	225	Const.				B			128.7	241386
Idaho	−4	−7	−14	7	6	0	Stat.		CMS		B			90.9	−67303
Illinois	0	−165	0	390	225	225					C			98.8	−130245
Indiana	−133	−168	−54	217	66	17			CMS		C			82.2	−828925
Iowa	70	79	163	28	0	30		CMS		S	C			93.4	−181414
Kansas	−14	−46	1	183	138	138		CM	S		C			86.6	−299422
Kentucky	−84	−56	0	14	0	0					C			83.7	−454185
Louisiana	172	−299	−16	550	251	0	Stat.		CMS		C			85.5	−562445
Maine	−5	−13	−3	19	6	3					C			108.4	64948
Maryland	−26	−188	−106	293	105	0		CM			C			110.1	363599
Massachusetts	−401	−268	−145	44	34	10			CMS		C			141.8	1927034
Michigan	−52	9	0	0	0	0	Const.		CMS		C			111.6	968029
Minnesota	−153	−85	−212	121	20	−180				CM	C			114.4	537022
Mississippi	−12	22	−73	60	82	9			CMS					96.5	−53017
Missouri	87	−177	6	240	64	99	Const.		CMS		C			82.6	−717057
Montana	12	2	36	42	44	79					C		X	88.3	−92680
Nebraska	154	74	89	116	35	36			CMS		A			98.5	−20433
Nevada	−33	−58	4	66	24	33	Stat.			CM		X		65.4	−353863
New Hampshire	−24	−9	−6	10	0	−7						X	X	77.6	−170241
New Jersey	−103	−99	−269	281	300	30	Stat.		C	MS				117.8	1164487
New Mexico	−69	−150	167	140	114	96		CMS	CMS		B			97.3	−32530
New York	129	−166	16	11.	11	12					C			172.2	9757226
North Carolina	97	−154	−131	285	131	0			CMS					92.5	−303990
North Dakota	−3	19	−42	157	176	126		CMS			B			81.6	−113764
Ohio	−215	−8	−4	142	134	129			CMS		C			84.3	−1480550

CAN THE STATES PICK UP THE FINANCIAL SLACK? (CONTINUED)

	STATE SURPLUS, DEFICIT (millions)						TAX and/or EXPENDITURE LIMITS								
	Current Receipts/ Expenditures			Total Resources/ Expenditures				Local							
	FY 80	FY 81	FY 82	FY 80	FY 81	FY 82	State	Assmnt. Increase	Prop. Tax Levy	Rev./Exp. Limit	St. Income Tax Linked to Fed. Tax	No Broad-Based St. Income Tax	No General Sales Tax	Tax Effort Index	Over or Under ( ) Utilization (thousands)
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Oklahoma	78	31	0	56	56	56					B			72.3	—799324
Oregon	—175	—87	—3	96	10	7	Stat.	CMS	CMS		B		X	93.8	—145130
Pennsylvania	—17	—72	—65	68	66	1								104.7	448740
Rhode Island	—15	—51	—35	35	33	1	Stat.				A			123.2	158447
South Carolina	39	—48	0	49	0	0	Stat.							92.4	—151952
South Dakota	5	3	—12	16	20	8						X		84.2	—89738
Tennessee	—4	—14	12	84	36	36	Const.					X		87.1	—407459
Texas	—182	—45	—527	439	394	—112	Const.					X		66.5	—4804854
Utah	—8	—4	—1	9	6	0	Stat.				B			97.3	—29761
Vermont	—8	—2	—2	—7	0	0					A			109.6	36015
Virginia...........	—93	—317	—29	351	37	8					C			88.3	—502539
Washington	—286	—124	—119	125	0	—119	Stat.		CMS	S		X		98.6	—51222
West Virginia......	—11	—67	—15	83	16	1					C			76.2	—397722
Wisconsin.........	—349	—143	—33	73	1	32			CM	S	C			118.9	754998
Wyoming	25	—59	—6	140	81	75						X		85.3	—111538
TOTAL	—480	—6868	—2319	11314	4726	2293	18	6	19	11	32	10	5	100.0	

NOTES

Columns 1-6. *Source*. National Governors' Association, National Association of State Budget Officers. *Fiscal Survey of the States 1980-81*. Washington, D.C.: October 1981.

Columns 1-3. These figures show the actual ending balance for General Fund budget transactions on a current income-expenditure basis for FY 80 and estimates of the outcome for FY 81 and 82. Estimates for FY 81 and 82 do not reflect the impact of recent federal tax and expenditure reductions.

Columns 4-6. These figures show actual and estimated General Fund balances taking into account carry-over from prior years and transfers. They do not include estimates of federal tax and expenditure reductions. Negative balances for FY 81 and 82 may be the result of using unrevised revenue or expenditure estimates.

Columns 7-10. *Source:* Advisory Commission on Intergovernmental Relations. Unpublished data. Washington, D.C.: June 1981.

Column 7. This column lists those state governments that currently operate under tax and/or expenditure limitations.

Key: Const. = Constitutional limitation.
Stat. = Statutory limitation.

Columns 8-10. These columns show state imposed limits on local government tax and expenditure powers in three major areas: property assessment increases; property tax levy; revenue and/or expenditure increases. Not shown are property tax rate limits.

Key: C = County
M = Municipal
S = School District

Column 11. *Source:* Advisory Commission on Intergovernmental Relations. Significant Features of Fiscal Federalism, 1979-80 Edition. Washington, D.C.: October 1980. This column indicates the extent to which state personal income tax structures conform to the federal income tax.

Key: A = Virtually Complete Conformance. State tax liability is computed as a percent of the federal liability.
B = Substantial Conformance. State taxable income is defined by reference to the Internal Revenue Code.
C = Moderate Conformance. State adjusted gross income is defined by reference to the Internal Revenue Code.

Columns 12-13. *Source:* Advisory Commission on Intergovernmental Relations. *Significant Features of Fiscal Federalism*, 1979-80 Edition. Washington, D.C.: October 1980. These columns indicate those states not having a broad-based personal income tax or a general sales tax.

Columns 14-15. *Source:* Advisory Commission on Intergovernmental Relations. Unpublished Preliminary Data. Washington, D.C.: 1981.

Column 14. Tax Effort Index is a measure of the extent to which a state tax system produces revenue in relation to its potential based upon a uniform tax structure for all states. For the nation as a whole the index equals 100.0. Thus a state with an index of 125.0 collects 25 percent more tax revenue relative to its capacity than do states on the average.

Column 15. These figures express the difference between actual tax collections and theoretical tax capacity. A negative number indicates additional tax capacity while a positive number indicates above average tax effort.

APPENDIX - 3

RANKING OF STATES BY RATIO OF PUBLIC TO PRIVATE ELEMENTARY AND SECONDARY STUDENTS, 1980

Rank	State	Ratio ($\frac{x}{1}$)
1	Delaware	4.3
2	Hawaii	4.4
3	D. C.	4.7
	Louisiana	4.7
	Pennsylvania	4.7
6	New York	4.9
7	Rhode Island	5.0
8	Wisconsin	5.1
9	New Jersey	5.3
10	Illinois	5.5
11	Connecticut	6.1
12	Missouri	6.5
13	Maryland	7.0
14	Nebraska	7.1
15	Massachusetts	7.2
16	Ohio	7.3
17	Florida	7.5
18	California	7.8
19	New Hampshire	8.1
	UNITED STATES	8.2
20	Minnesota	8.3
21	Michigan	8.7
22	Iowa	9.3
23	Kentucky	9.4
	Mississippi	9.4
25	Indiana	10.5
26	North Dakota	10.9
27	Tennessee	11.7
28	South Dakota	11.8
29	Alabama	11.9
30	Kansas	12.1
31	Maine	12.5
	South Carolina	12.5
33	Vermont	12.6
34	Arizona	12.7
	Georgia	12.7
36	Virginia	13.3
37	Washington	13.5
38	New Mexico	14.7
39	Colorado	15.5
40	Oregon	16.5
41	Texas	19.0
42	North Carolina	19.5
43	Montana	20.2
44	Nevada	22.5
45	Alaska	23.2
46	Arkansas	23.8
47	West Virginia	30.4
48	Wyoming	32.4
49	Idaho	34.8
50	Oklahoma	35.4
51	Utah	61.7

The ratio column shows the number of public school students per state for each private school student. For example: in Delaware there are 4.3 students in public schools for each student in private schools. For the U.S. as a whole, the ratio is 8.2 to 1.

Source: National Center for Educational Statistics.
School Statistics in Private Elementary and Secondary Schools, Fall 1980.
Early Release 12/4/81.

APPENDIX - 4

NEW BUSINESS ADOPTED BY
1982 REPRESENTATIVE ASSEMBLY

Tuition Tax Credits

The National Education Association continues to oppose tuition tax credits and voucher plans because they constitute bad educational policy, bad economic policy, and bad public policy. NEA will continue to do all that is possible to defeat tuition tax credit proposals in the Congress. NEA will intensify its efforts to work cooperatively with all individuals and groups in support of the public schools and in opposition to tuition tax credits and voucher plans wherever and whenever they are proposed.

NEA urges all members and affiliates to utilize the Association's many community action activities and community contacts and relationships to give all Americans the facts about these proposals that threaten the future of our American public schools.

NEA calls on all members and affiliates to participate in the fall petition drive against tuition tax credits, helping the National Coalition for Public Education make this effort a resounding success. (1982-F)

Court Challenges to Tuition Tax Credit and Voucher Plans

The NEA shall initiate a court challenge of the constitutionality of any tuition tax credit or voucher plan adopted as law. This intent shall be made known to Congress. (1982-60)

NEA RESOLUTION

B-13. Basic Financial Support of Public Education

The National Education Association believes that to achieve the Association's commitment to equal educational opportunity for all and to assure fair tax practices for all citizens, public education must be supported from public tax sources. The Association will continually seek general federal support for the whole of public elementary and secondary education. The federal monies must be expended solely and equitably for public education. The Association also condemns and deplores federal policies and programs that serve to undermine America's historical commitment to free public education. Therefore, it seeks support in accordance with the following principles:

a. The federal share of the cost of public education must be at least one-third.
b. Educational funding must be budgeted separately in recognition of its high priority in the federal budget.
c. Instructional programs which are federally funded should have maximum teacher involvement in their development at the federal level and, at the local level, must be implemented only after the involvement and approval of the recognized bargaining agent or local affiliate.
d. Advisory committees for federally funded programs should reflect the ethnic makeup of local communities to ensure accountability and equity. Parents, students, and educators should be included as members of these committees.
e. The amount of aid must be generally predictable for long-range planning and specifically predictable for year-to-year planning.
f. Present programs of specific aid must be expanded and improved by consolidation and simplification of administration.
g. A process of tax revision must be established at all levels, and tax administration must be subject to continuing review.
h. Local governing boards must be fiscally independent, and restrictive limits must not be imposed on their budgets or long-term borrowing.
i. The state and local share of finance must be derived from a tax system which is balanced and complementary in nature, includes all broad-based taxes, reduces the excessive reliance on property taxes, and protects subsistence income.
j. Public funded services for nonpublic school students must be strictly limited to medical and dental care, public welfare programs, school lunch and milk programs, and public safety services such as fire and police protection, which are budgeted and administered through the appropriate public agencies.
k. Federal legislation must comply with civil rights statutes, be consistent with the constitutional provision respecting an establishment of religion, and provide for judicial review as to its constitutionality.
l. Programs, where appropriate, must make adequate provision for research and development and for promoting improvements in educational practice.
m. Funds for programs to alleviate sex discrimination and to reduce portrayal of sex stereotypes in the public schools must be provided.
n. Public funds shall not be expended for any materials that promote sex stereotypes and/or sex bias.
o. Categorical funding is essential in the areas of special education, bilingual/English as a second language, and for the economically/educationally disadvantaged and must be assured.

The Association will oppose any bill which includes provisions in federal legislation to provide funds, goods, or services related to the instructional process for nonpublic schools or nonpublic school students.

TESTIMONY OF

R. G. PUCKETT
Executive Director
AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE

Mr. Chairman and Members of the Committee:

My name is R. G. Puckett. I am executive director of Americans United for Separation of Church and State. We appreciate this opportunity to address the Senate Finance Committee on S.2673, the Educational Opportunity and Equity Act of 1982.

Americans United is a 35 year-old organization dedicated solely to the preservation of the religious liberty and church-state separation provisions of the First Amendment of the Constitution. We represent through our membership individuals of conservative and liberal political persuasions as well as the full spectrum of religious faiths and nonbelievers who are concerned with the preservation of religious freedom.

It is this concern and regard for the First Amendment guarantees of religious liberty that has prompted our request to testify on this proposed legislation. While our interests center primarily in the area of the constitutional aspects of this bill, I will also address the economic and public policy problems with it as well.

There are serious constitutional problems with S.2673 in our opinion. This conclusion is based on year after year of Supreme Court decisions establishing a clear legal record that tax aid, direct or indirect to parochial or church-related schools, is aid to religion and, therefore, unconstitutional.

The Court has allowed only incidental aids, or auxiliary aids, which directly benefit all children equally and not the institutions. Aid of this type includes loans of textbooks, diagnostic services, and school lunch programs under the theory that all children benefit from the program. There are currently suits pending in lower federal courts, however, which are challenging textbook loans.

Beginning with Lemon vs. Kurtzman 403 U.S. 602 (1971), the Court established a three-part test for constitutionality for any plan to aid a parochial or church-related school. The law in question must reflect a clearly secular legislative purpose; it must have a primary effect that neither advances nor inhibits religion, and it must avoid excessive government entanglement with religion.

In the case, Committee for Public Education and Religious Liberty vs. Nyquist, 413 U.S. 756 (1973), the Court struck down a New York state tuition tax credit plan similar to that proposed in S.2673. It said that since the benefits go "to parents who send their children to sectarian schools, their purpose and inevitable effect is to aid and advance those religious institutions."

There is no question that this tax aid advances religion since at least 85 percent of the students in all nonpublic schools are in church-related schools. The fact that the aid may be viewed as incidental in amount in light of high tuition rates does not alter its intent -- to aid religion.

Moreover, the fact that the aid would be routed through parents is irrelevent. Parents would serve merely as conduits of the aid, which eventually goes to the church schools. We believe the child benefit theory could not be used to prove constitutionality in this case because the only children benefited are those in private schools, not all the children in the country.

The genesis and promotion of this bill represents a certain confluence of religious and political interests. As the Supreme Court pointed out in the 1971 Lemon ruling, "in a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail....

"Ordinarily political debate and division, however vigorous or even partisan are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect."

This bill could so entangle religion and politics that two centuries of progress in First Amendment rights to religious liberty and church-state separation could be unalterably reversed.

Furthermore, to deny that denominational elementary and secondary schools do not discriminate by religion is to deny their very purpose -- to remain religiously homogeneous. Giving public funds to such schools through the tuition tax credit proposal in S.2673 would result in federal government subsidization of sectarian division and divisiveness in education. The result of this could only be a decline in interfaith and community harmony and a socio-economic crisis in education.

Beyond the obvious constitutional problems this proposed bill presents, there are numerous other problems it could create. The cost of this program could reach almost $4.5 billion over the first three years of the program. This is lost revenues for nonstimulative credits, which are uncontrollable and inflationary. It seems unconscionable to us that Congress would pass such legislation at a time when such drastic cuts are being made in the education budget.

Further, no one has adequately answered the concern church school administrators have over regulation of their schools. While many of these schools, which in the past have refused government funds are holding out their hands now for a piece of the tax pie, they are, at the same time objecting strenuously to any kind of federal, state, or local regulations.

There is no amount of federal funds that can be taken by these schools that will not be accompanied by increased regulations. A primary example of the need for regulations is contained in the bill itself. It states that no credit shall be paid to an educational institution unless that school files with the Secretary a statement that "declares that such institution has not followed a racially discriminatory policy during such calendar year." This puts the burden of proof on the school instead of on the government and requires more paperwork by church schools.

That would require new policing efforts by some agency, such as the Department of Education or the Internal Revenue Service. Government bureaucracy and red tape would evolve around the inevitable regulations that would come with tuition tax credits and would entangle government with religion, precisely what the religion clause of the First Amendment was intended to prohibit.

Beyond that, there are glaring omissions in the bill, with no mention of other types of discrimination, such as by religion, by sex and in other ways.

Furthermore, the discrimination clause of the bill would produce the opposite effect the Administration claims it wants -- to get government out of our lives. Churches could not freely exercise their religious mission of educating their youth with government investigating attendance and other records that they would be forced to keep. Barbara Morris, a conservative activist and writer, warned in the Pro-Family Newsletter of April, 1981 that the tuition tax credit plan is a "trap that will result in government control of all schools." Morris also noted that "providing information for such tax credits on 1040 or other tax forms will enable the government to identify every family with children enrolled in Christian schools as well as the schools they attend -- information they do not presently have."

The public schools were founded on the concept of a free universal system of education for every child, regardless of economic status, race, religion, or ethnic background. The institution of public schools in this country has been the foundation that has helped to produce a strong middle class, one of the highest literacy rates in the world, and a chance for every citizen to better him or herself.

This proposed legislation would completely upend that concept and tradition. The beneficiaries of this aid would be primarily upper income families, who can afford to send their children to expensive nonpublic schools.

Furthermore, how much of a tax credit is enough? Who is the final arbiter to decide that question? If parents can claim 50 percent of tuition costs to nonpublic schools, why can't they claim the full amount. If the lesser amount is permissable than the full amount is as well.

The amounts of the credits would escalate because parents would be encouraged to remove their children from public schools and place them in nonpublic schools to take advantage of the tax credit. This could force the costs of programs in private schools to increase, thus encouraging those schools to ask for a greater tax credit. Those schools could also raise their tuition rates to take full advantage of the credit.

The result could be an educational civil war between the private and public schools vying for public funds. Public school funds that have already been drastically cut would be cut further to meet the budgetary needs of funding tuition tax credits.
John Chapoton, assistant secretary for tax policy for the Department

of Treasury said in testimony before the House Education and Labor Committee that, "Tuition tax credits would be increased to the extent that direct student assistance programs are reduced or private school enrollments or tuitions increase.

At the same time the private schools would not be required to follow minimum educational standards established for public schools. This aid would foster an elitist caste system of education in this country with the public schools becoming the dumping ground of those not acceptable to the private schools, such as the poor, the handicapped, and others.

That is why the idea that tuition tax credits would foster so-called needed competition between the public and private schools is false. The roles of the public and private sectors in education are very different. Private schools do not have to follow standards of teacher qualifications, salaries, curricula, services, etc.

Beyond that the local citizenry would have no say in what happened to the private schools which are controlled and operated far from the eye of open, public meetings as with the boards of education of public schools.

Historically the American people have not shown much support for aid to parochial schools. For approximately the past 15 years Americans from Alaska to New York have consistently voted down such aid. The following are results of statewide referenda and initiatives of the past decade on government aid to parochial and private schools, elementary, secondary, and postsecondary.

State	Year	Vote Against	Vote For
New York	1967	72.5%	27.5%
Michigan	1970	57%	43%
Nebraska	1970	57%	43%
Oregon	1972	61%	39%
Idaho	1972	57%	43%
Maryland	1972	55%	45%
Maryland	1974	56.5%	43.5%
Washington	1975	60.5%	39.5%
Missouri	1976	60%	40%
Alaska	1976	54%	46%
District of Columbia	1982	88%	12%

We understand th[illegible]ems that parents, who choose to send their children to nonpublic schools, have in paying high tuition rates. But the answer is not to provide public funds to those special interest schools. It is bad economic and public policy because it would create chaos in our educational system and destroy our long tradition of separation of church and state and the right to privately and freely exercise our religious beliefs. Americans United ask this Committee to oppose S.2673.

STATEMENT OF MITCHELL H. EDELSTEIN, LEGISLATIVE REPRESENTATIVE, AMERICANS FOR DEMOCRATIC ACTION

My name is Mitchell H. Edelstein. I am Legislative Representative for Americans for Democratic Action, a political-action organization with members across the nation.

ADA opposes any legislation which would provide tax credits as a way of financing education. Tuition tax credits should be opposed on principle, as bad public policy and bad education policy.

Tuition Tax Credits Are Ineffective

Enactment of tuition tax credits would produce an uncontrollable tax expenditure, estimated to exceed two billion dollars yearly, without ensuring that private schools would not take advantage of this program and simply raise tuition costs.

In addition, a national program of tuition tax credits undoubtedly would encourage fraud and abuse on the part of schools and parents. As we have seen in the Guaranteed Student Loan program, safeguards against fraud and abuse must be built into a program when it is enacted. The potential for financial abuse of this program would be great. Yet, more importantly is the potential for educational abuse of the youth of our country. Illegally obtained benefits can be recovered, but who will help the young students whose education suffered?

At a time when drastic and unconscionable cuts have been made in the federal programs which provide real aid to education, nutritional support for our children and basic health care, this country cannot afford a program that provides financial support without any accountability for the dollars provided.

Tuition Tax Credits Are Inequitable

No matter how the proposals for tuition tax credits are revised or revamped, these tax credits would benefit less than

10 percent of U.S. families with children attending elementary or secondary school. And because the tax credit envisioned under S. 2673 is not a refundable tax credit, only those families WHO ~~which already~~ pay sufficient taxes would benefit from this credit. Low-income families and lower-middle-income families with above-average deductions or more than one eligible child would find the credit to be either completely unavailable or reduced.

Tuition Tax Credits Would Promote Racial Discrimination

Despite the three provisions written into S. 2673 -- annual sworn statement, declaratory judgment proceedings, and the IRS tax exemption, designed to ensure that "this legislation should not be used to promote racial discrimination" -- ADA believes that it would be impossible to prevent tuition tax credits from benefitting schools that blatantly discriminate on the basis of race.

Let us examine the three provisions in S. 2673 that are intended to prevent educational institutions which discriminate on the basis of race from benefitting from this legislation:

The first provision is a requirement for an annual statement declaring that "such institution has not followed a racially discriminatory policy during such calendar year...."

At this time it is still not clear who will swear to this statement. Will it be the chief executive officer, the board of trustees, or the secretary of the corporation on behalf of the corporate entity? Who will be prosecuted for perjury? And, given the limited resources we all acknowledge, what other important functions of the Justice Department will be set aside so that these cases can be pursued?

The majority of private elementary and secondary schools do not discriminate on the basis of race. These schools would have no problem in filing the required sworn statement. Unfortunately, the schools that do discriminate would have no problem either.

The second provision authorizes the Attorney General to bring declaratory judgment suits to establish that a school in fact follows racially discriminatory policies. If a final judgment to that effect is secured, then no tax credits shall be allowed for tuition paid to the institution during the calendar year in which the Attorney General's suit was instituted or the two years immediately preceding the suit.

The declaratory judgment process would encourage diversion and delay. To bring suit requires a specific act of discrimination against an individual under a racially discriminatory policy. The Attorney General is then authorized, "upon finding good cause," to bring an action against the educational institution. The Attorney General is required to notify the institution concerned about the allegations and to allow the school to show that the alleged discriminatory policy does not exist or "has been abandoned," (even though the institution has previously sworn that it does not discriminate).

The third provision is a continuation of current IRS policy which prohibits granting tax exemptions to schools which discriminate on the basis of race. But as we are all aware, this policy has been the source of recent controversy, and the Reagan Administration most likely will be arguing before the Supreme Court that this policy is not authorized by law. Finally, all of these policies require an overall Administration commitment to civil rights. ADA believes that the Reagan Administration has shown, on many occasions, it's lack of commitment to civil rights. Therefore we find the provisions of S. 2673 that are intended to prevent educational institutions from discriminating on the basis of race to be totally inadequate.

In conclusion, Mr. Chairman, we believe that it is the function of taxes to support services, such as free public schools, which are available without discrimination to all regardless of whether the individual taxpayer avails himself of them. They are provided for the public good. No parent has the right to a share of public tax funds to subsidize a private choice.

This plan would incur great cost, encourage schools to raise tuition, increase government regulation, create a divided educational system, and benefit the wealthy at the expense of the needy.

Thank you, I would be pleased to answer any questions at this time.

Senator **Durenberger**. Senator Moynihan?

Senator **Moynihan**. Mr. Chairman, I would like to thank our panelists. I would like especially to ask Mr. Edelstein to give our regards to Father Drinan.

Mr. **Edelstein**. Thank you very much.

Senator **Moynihan**. I think we know the positions of the NEA and Americans United and the ADA. We certainly respect them, and we very much appreciate the clarity and reasonableness with which they have been set forward. It is a matter we just don't agree on, entirely.

I guess I would make one point, particularly to Mr. Cameron, about constitutionality, which I think Senator Dole, our chairman, made this morning, which is in effect that the Supreme Court does not give advisory opinions, and an issue of constitutionality can only really be resolved by enacting a statute and testing it. I think you would sort of have to agree to that, would you not?

Mr. **Cameron**. When I used to work with State legislatures, that was the argument that they raised all the time, that it is not our job to judge the constitutionality of this provision; it is our job to pass the law.

I think, however, it is important that we recognize what the Supreme Court has said. And the Supreme Court, in the *Nyquist case,* specifically ruled unconstitutional this kind of program.

We believe it is unconstitutional. Our research shows that it will be ruled unconstitutional eventually. It certainly is going to end up in the courts, regardless of what happens.

Senator **Moynihan**. You do know that Senator Packwood and I, in our original legislation, asked for an expedited review because we very much did not want this system to go into effect until the Court had ruled, so the Court wouldn't be facing the proposition that, "Well, there are *x* million families receiving benefits which we will now be having to take away." We said, answer it first, and if it is all right go ahead.

Mr. **Cameron**. Well, Senator, I would like to answer a question that you haven't asked yet but no doubt will. The NEA would be adamantly opposed to this proposition even if it were constitutional.

Senator MOYNIHAN. Your colleague a year ago made the same point. They are acceptable propositions, and it is perfectly legitimate to say, "No; it doesn't matter whether it is or isn't, we don't think it is good public policy. There is a constitutional issue, and there is a public policy issue." And you are quite right.

Thank you, Mr. Chairman.

Senator DURENBERGER. Senator Bradley?

Senator BRADLEY. Thank you, Mr. Chairman.

Mr. Cameron, in your testimony you say on page 8 that:

> Tuition tax credit subsidies for private schools will force the Federal Government to evaluate and regulate private schools. Since tax credits would be given for private school tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made.

Mr. CAMERON. Yes, Senator.

Senator BRADLEY. What certification would you have in mind?

Mr. CAMERON. Well, we haven't provided any specific kind of certification; but we make the point very clearly that the Federal Government, if it is going to give tuition tax credits or some other form of aid to private and parochial schools, must necessarily get in the business of supervising what those schools do, to some degree.

The proponents of tuition tax credits often say that there are always strings attached to Federal money when they come to the schools.

In the area of civil rights enforcement, for example, we think that the administration, the Government, is going to have to keep a wary eye on what is going on in those schools to make sure that they don't discriminate on the basis of race, or sex, or some other proviso that the Government cares about.

Senator BRADLEY. But try to help us, as a committee, to think this through. Your proposition is, the expenditure of public dollars requires certain accountability, as I understand it.

Mr. CAMERON. That is right.

Senator BRADLEY. The question, you have said, then, is certification. Well, what does that mean? We are writing a bill about tuition tax credits. If you were talking about certification, what kind of specifics are you recommending?

Mr. CAMERON. Well, the NEA has not taken a position on that, specifically, Senator. I would suggest that we would be amenable to having the IRS continue to regulate on the basis that they have in the past relative to those kinds of issues, or some other agency that would certify the fact that those private and parochial schools are meeting certain basic requirements that are guaranteed in this Constitution.

Senator BRADLEY. What requirements? "Meeting certain requirements"—what requirements?

Mr. CAMERON. Well, that they don't discriminate on the basis of race, for example.

Senator BRADLEY. All right. Any others?

Mr. CAMERON. We would like to believe that they wouldn't discriminate on the basis of sex.

Now, private and parochial schools, by definition, discriminate on some basis or there wouldn't be any reason for them to exist.

And we recognize that. They have a right to exist. They have a right to have students. They have a right to teach. They have a right to want people of a certain kind of religion, or whatever. We have no objection to that. But there are certain fundamental principles that have been discussed here in these Chambers today.

Senator **Bradley**. All right. So the point you make under the heading "Public Policy Issues" on certification is really a point about various forms of discrimination. Is that correct?

Mr. **Cameron**. We would want them to meet the same requirements that they are currently meeting under State and Federal statutes. We aren't providing or proposing anything new. We are talking about those kinds of certifications that would keep a wary eye on these questions of sex equity and racial discrimination.

Senator **Bradley**. All right. What was your point about their meeting under State——

Mr. **Cameron**. Whatever the State and Federal statutes currently impose upon private and parochial schools, in terms of what they have to teach, how they have to teach it, who can be admitted, and so forth, we say are appropriate. We are not trying to change those, and we are not suggesting any additional kinds of certifications. We are talking about the regulation of those schools as it regards to human and civil rights.

Senator **Bradley**. All right.

Let's go to the civil rights aspect of your testimony, which is, I am sure you sensed, a real concern on the part of the committee today.

You talk about three ways in which you feel that the administration's bill is inadequate in this area, and then you say "there is no substitute for direct, unequivocal statutory language to prevent racial discrimination." What specific language do you think would be clear and unequivocal?

Mr. **Cameron**. We haven't any language to propose. I can tell you what we don't like. We don't like the wording of the current bill. We think that it provides all sorts of opportunity for mischief relative to the enforcement portion of getting somebody to swear that they don't discriminate, and then give them more time before the hammer comes down to undo whatever it was that they swore they weren't doing seems a little bit ludicrous.

Senator **Bradley**. I think there are a number of us who are concerned in that area. The question is, If we are trying to make it stronger, do you have any suggestions?

The previous panel, for example, suggested an expedited hearing or appeal for a declaratory judgment. If you don't have any——

Mr. **Cameron**. I don't have any.

Senator **Bradley**. Does anyone on the panel have any suggestions in this area?

Mr. **Edelstein**. As I understand it, when the administration originally presented this proposal, it met with a large number of civil rights groups from the Washington community and nationwide civil rights groups. They were told that they would have an opportunity to make suggestions to the bill. The bill that was presented to them was unacceptable to them at the time. That bill is also the bill that is before you now, so their comments were not incorporated into the bill. I believe they would have specific provisions to propose.

It is unfortunate that this hearing really doesn't have representatives of any of the major civil rights organizations testifying.

Senator **Bradley**. Would you know what those suggestions would be?

Mr. **Edelstein**. No; I did not participate in that meeting. I am sure that the Leadership Conference on Civil Rights would be certainly interested in commenting upon the civil rights procedures in this bill.

I think, certainly, the provisions that require an organization to get tentative approval for its tax exemption under the IRS Code, where the burden of proof is upon the organization to prove that it is tax exempt to get this benefit from the Government, would be a similar precedent.

Senator **Bradley**. All right.

Thank you very much, Mr. Chairman.

Mr. **Edelstein**. Thank you.

Senator **Durenberger**. Thank you, Senator Bradley.

Mr. Cameron, let me ask you what you consider are the basic distinctions between a "private" or "public" school, as we use those terms?

Mr. **Cameron**. Pardon me, Senator? The basic difference between a private and public school?

Well, I think the essential difference is that parents decide to send their child to a private school rather than a public school in order to have the student exposed to some kind of doctrine, some kind of philosophy, some kind of code, whether it be religious or civil, that is not provided in the public schools.

Senator **Durenberger**. Is that your full answer? That is the main distinction between the two?

Mr. **Cameron**. Yes.

Senator **Durenberger**. You said earlier in a response to a question from Senator Bradley, I think it was, that private schools discriminate or they would not exist. What did you mean by that?

Mr. **Cameron**. What I meant by that was that private schools, by definition, have the right to admit through their doors Catholic students only, if they so desire. I am not suggesting that they do. Or Jewish students only, if they so desire. Or students who are not handicapped; or students who do not have emotional, psychiatric problems; or students who have difficulty learning and are truant. They can refuse to admit students who have been tried in courts and have a history of problems with the police, or whatever. So the private schools have the opportunity to discriminate in that sense. The public schools do not.

Senator **Durenberger**. But the implication, then, in response to my first question, is that you could add "discrimination" in either a legal or a societal sense as a definition of a private school, in your opinion?

Mr. **Cameron**. To the sense that they can discriminate in not admitting certain kinds of students or certain students, yes, sir.

Senator **Durenberger**. But if private schools discriminate or they would not exist, implicit in that is that all private schools, of necessity, discriminate. Is that the position of the NEA?

Mr. CAMERON. No. The position of the NEA is that all private schools have the opportunity to discriminate, in the sense that I am talking about now, Senator.

Senator DURENBERGER. I have another question that may be only indirectly related to the bill before us. We were talking about the expenditure of public funds requiring accountability. And I take it in elementary or in education generally that accountability is high-quality education.

Part of your statement, I believe, is that "we believe that America must have high-quality tuition-free public schools."

Would you tell me how a tuition payment interferes with high-quality education?

Mr. CAMERON. Well, in the most obvious way, money that is appropriated to the private and parochial schools comes at the expense of the public schools. I think that is fairly obvious; others think that that is fairly obvious. As a matter of fact, I don't think that it is any coincidence that roughly the amount of money that is being siphoned from the public schools today, in terms of cutbacks at the Federal level, is essentially the same amount of money that is being proposed to be inserted into the private and parochial schools.

Senator DURENBERGER. Well, let's go back and just deal with the "high-quality, tuition-free," part of your statement.

If a parent or a student pays $10 a quarter to go to the local public school, how does that interfere with high-quality education?

Mr. CAMERON. I don't think it does, Senator. Our position is that the first priority of this Government, at the local, State, and national level, ought to be the public schools, that they have served this country well, that they ought to be tuition free, and that they ought to have high-quality education encompassed within them.

Senator DURENBERGER. I think we can agree with you on the idea that this Nation has and ought to maintain a priority for the public school system.

Mr. CAMERON. Yes, sir.

Senator DURENBERGER. My question relates to your add-on belief, which is that that system can only exist without tuition. Is that your position?

Mr. CAMERON. Our belief is that private and parochial schools should not receive a tuition tax credit from the Federal Government.

Senator DURENBERGER. But your position is also that the public school system would be reduced in its quality of education if any form of a tuition were required of any person attending?

Mr. CAMERON. That is correct.

Senator DURENBERGER. Is that an official position of NEA, do you know?

Mr. CAMERON. We believe that. Yes, sir.

Senator DURENBERGER. I guess my time has expired.

I thank all of you for your patience today, and I am sure we won't have seen the last of this issue.

Mr. CAMERON. Thank you.

Senator DURENBERGER. All right. We have three survivors for the last panel: Patty Eubanks, from New Brunswick, N.J.; William Coats, professor, Department of Education, University of Michigan in Ann Arbor; and Edward E. McAteer, president, Religious Roundtable, Arlington, Va.

Senator Bradley?

Senator **Bradley**. Mr. Chairman, I just want to welcome Patty Eubanks to the Finance Committee and tell her to relax—I'm the only one here.

I assume that the chairman is returning. In his absence, why don't we turn to Mr. Coats, then Ms. Eubanks, then Mr. McAteer.

Mr. Coats, welcome to the committee. We appreciate the sturdiness of everyone here getting through to the end.

STATEMENT OF WILLIAM COATS, PROFESSOR, DEPARTMENT OF EDUCATION, UNIVERSITY OF MICHIGAN, ANN ARBOR, MICH.

Mr. **Coats**. Thank you for the opportunity to comment today. We in education appreciate the continuing efforts to improve schooling on the part of the Senate and your interest in the views of professionals.

I am coming at this from a little different, perhaps a substantially different perspective than most of the other witnesses.

Senator **Bradley**. Do you mean there will be something new said in your testimony?

Mr. **Coats**. I think so. I do have extensive public school experience. My father was a principal; I have taught and coached in Detroit area schools, served as superintendent for 4½ years in the Kalamazoo public school system, 5 years in Grosse Pointe; and of course the University of Michigan is a public institution as well.

In those roles I experienced firsthand, year after year—and I think it has gotten worse over the years—the inefficiencies which result from a monopoly wherein you have guaranteed government revenues and what amounts to a captive audience.

I think the lack of competition inherent in that kind of an environment is such that public school systems are not as responsive as they should be to their clients: to students, to taxpayers.

I am supporting tuition tax credits to help public education. I really believe that an element of competition, the increased parental choice which a little bit of financial assistance might provide might be the catalyst necessary to help public schools compete, be more responsive to their clients.

If you look just at the collective-bargaining process, that seems to operate almost in a vacuum of reality. Consider Michigan, as an example. It is a very depressed economy—record business failures, record wage concessions in the private sector. Yet, the public school unions and public school boards of education continue as if that does not affect them. We have example after example of multiyear bargaining contracts in excess of 10 percent, layoffs based on seniority, extra pay for any little extra duty you might imagine, and a kind of management system which discourages excellence, which rewards mediocrity, almost negotiates, as a matter of fact, dedication out of the contracts.

We have had great public schools in this Nation. I think that you need a system of checks and balances. When you get to the point where unions, in effect, take control of local boards of education and are negotiating only in their own behalf, and are not as responsive to students and to citizens as they should be, you begin to have some problems.

I think those who argue the public schools are in jeopardy, they are correct. The public schools are in jeopardy. The question is, Why? And, What is the remedy?

I believe the difficulty is somewhat analogous to that which has been experienced by the automobile industry. In both cases, the automobile industry and public education simply gave away more than they could afford at the bargaining table. They became burdened with unnecessary layers of supervisors. They tolerated shabby performance.

Now, it is a fact that the image of public schools is undergoing some change in this country. There is increasing taxpayer dissatisfaction; there is increasing parental alienation.

While public schools, with all of the support enjoyed by a monopoly, in many cases are dying on the vine—and Michigan is a prime example—where there simply aren't enough berries on the bushes to support that dinosaur, there must be radical changes.

Someone mentioned this morning that this is a very serious action on the part of Congress because this represents a basic change in financing education. I just would reiterate that. It does. And I think that kind of change is necessary and called for.

Most of my other comments have been made by other presenters, so I will close here.

Senator **Durenberger**. Thank you very much.

Who is next? Ms. Eubanks?

Ms. **Eubanks**. Yes. Thank you.

STATEMENT OF PATTY EUBANKS, NEW BRUNSWICK, N.J.

Ms. **Eubanks**. Good afternoon.

My name is Patricia Eubanks, and I live in New Brunswick, N.J. In beginning, I want to thank the members of the Senate Finance Committee for the opportunity to speak here today. I have come because I believe that education is among the most necessary of the key elements needed for a successful future.

I am here also because I believe that the issue of tuition tax credits for families of nonpublic school students is so important.

My graduation from St. Peter's High School in June marked the completion of 13 years of Catholic education. It also marked the fourth time a member of my family was graduated from Catholic high school. To understand the sacrifice in my parents' choice of nonpublic schools for their children, the committee should know something about my family, about what we value, and about the community in which we live. I say this not because one family's experience is extraordinarily significant but because I believe our family experience is repeated by so many middle- and low-income families of all races, all over the country.

I am the fourth of five children of Leo and Georgia Eubanks. My father is employed as a machine maintenance worker by Johnson & Johnson, the largest employer in the city of New Brunswick, N.J. My mother is employed by the New Brunswick Board of Education as a paraprofessional.

I was born, raised, and educated in New Brunswick. My parents own our home there, and my mother is the leader in the neighborhood committee and has been active in the St. Peter's High School Parent-Teacher Association.

New Brunswick is a rapidly changing city. Construction projects dominate the downtown section and are looked upon as outward symbols of new promise for the city.

Within the city are two high schools: my alma mater, St. Peter's High and New Brunswick High School. I am not here to criticize the public school system. Many of my friends are graduates of the public school, and their experiences appear to have worked out for them. For many of them, though, the advantages or disadvantages of the system were not significant in their choice of the school system, because they had no real choice, no alternative, no option. This is because, while government guarantees parents a choice in the education of their children, it imposes a financial penalty on those who choose anything but public school. Thus, many poor and middle income families really do not have a choice.

Fortunately, my parents were able to exercise their choice. They wanted something more than math, English, history, or other subjects that are taught in public schools. They wanted an education with a philosophy consistent with their own.

Consequently, three of us—my brother Paul, 28; my brother Christopher, 22; and I, 17—were educated at and graduated from St. Peter's. My brother Joseph, 19, was graduated from St. Joseph's High School in Metuchen, and my youngest sister, Cynthia Rose, will enter St. Pius High School in Piscataway in September.

My parents selected Catholic schools in general because of their philosophy of education, and different schools specifically because of the different personalities and needs of each child. They always try to do what is best for the particular child at the particular time.

The cost of their commitment in terms of hours worked overtime by my father, and vacations foregone by our whole family, among other things, is never mentioned by my parents, and we children only became aware of it as we grew older and, I hope, wiser. But we all knew that for my mother and father, raising five fulfilled achievers with strong moral beliefs was well worth the financial sacrifice.

But now I must ask why such sacrifice was necessary and why a choice in education is impossible for so many families. I believe it is because the present method by which Government funds education discriminates against hard-working families like mine who, when they prefer nonpublic education, must pay both taxes for public schools and tuition for their children. I must ask why Government guarantees parents a choice and then penalizes them if they choose anything but public school.

My family, and I think most families, support a strong public school system, but we also support the concept of fair treatment of all students by government in funding of education.

If diplomas earned at nonpublic elementary and high schools are accepted by the State, then those families who choose them for their children should not suffer a financial penalty. This is why I am glad that tuition tax credits may at last become a reality. I know that a $500 tax credit would have made a big difference for my parents and for the parents of many of my friends.

I came today because I want to try to make things different for people like my mother and father. I do not pretend to be a constitutional expert. I leave it to others to argue the letter of the law. I know that if tuition tax credit legislation is passed now it will mean little to my parents who have already sacrificed so much. But it will help many other families like mine, and if my sharing our experience with you helps to achieve that end, it will have been worth all the effort.

Thank you very much.

Senator **DURENBERGER**. Thank you very much.

Dr. McAteer?

Mr. **MCATEER**. Yes. Not "doctor."

STATEMENT OF EDWARD E. McATEER, PRESIDENT, RELIGIOUS ROUNDTABLE, ARLINGTON, VA.

Mr. **MCATEER**. My name is Ed McAteer. I am president of the Religious Roundtable, a coalition of political, business, and religious leaders whose focus is public policy concerning moral issues.

A long time ago a very wise man named Solomon gave this advice: "Train up a child in the way that he should go, and when he gets old he will not depart from it." The question is, Who should do that training? the state? the NEA? the ACLU? The utopians? The behaviorists? or the parents?

Our concern over the issue of tax credits is not to find a way to get extra money for Christians who support private schools; our basic concern is one of justice. America needs to find an equitable arrangement for educating the youth of our land.

We must begin by looking at the whole structure of our American system of education. Who is responsible for the education?

As Christians who take the Bible seriously, we think most of us would have to say that parents have primary responsibility of the education of their children.

Up until the 1840's, Americans assumed almost without question that education was the concern of parents. For the most part, schools were not State supported, State funded, or State initiated. The State of Massachusetts first got involved in what we call public education. A variety of schools emerged at this time—church schools, schools founded by associations or groups of people, schools we might call public schools in the sense that they were founded by some public authority, though not necessarily established by a State government. But in all this variety, parents were still assumed to carry principal responsibility for the education of their children.

Many Christians who take their religious convictions seriously are deeply troubled by what they see happening to their children. They perceive public schools today as dominated by a secular, humanistic philosophy in open conflict with Christian convictions. A growing number of parents, therefore, are pulling their children out of these schools and placing them in the mushrooming numbers of private schools.

Today we have two principals vying for authority over education: the State or government or community with its elected school board, and parents. Parents have the right to opt out of governmental responsibility if they want, but only if they pay their own way. They must also continue to pay the government's way.

We must go back to the basics in education in order to find a better way in America. We propose that government should no longer view itself as holding the "primary responsibility in education," but it is the parents who should be responsible for the education of children.

Government should view its role in education only as a secondary principle working toward the equitable, proportionate financing of all agents of education that offer themselves in society. If parents, citizens, or communities are unable or unwilling to educate anyone, then government would be asked to provide its own schools; but government schools should then not be viewed as more legitimate or worthy of receiving public money than the other schools. Rather, they should be on an equitable basis.

As government is not the only agent of education today in our Nation, it should not therefore continue to be the only recipient of public funds for education.

Questions:

First, are tuition tax credits really unconstitutional? The answer is that it is not finally decided by the Supreme Court.

Second, would tuition tax credits harm public schools? The argument posed through this question has a familiar ring. Before the American Civil War some slave owners argued: "We cannot abolish slavery or the southern economy will suffer." Now, abolition of slavery may have caused some economic hardships in the South, but the question of slavery was not one to be answered in terms of economics alone; a basic human right of freedom was at stake.

Third, do tuition tax credits encourage fiscal irresponsibility?

One of the biggest bureaucracies in government today, though much is at the State and local level, is the educational bureaucracy. This is the place to start to solve the problem of too much redtape and government spending in education. Proper pluralization of education would take its agents and principals out of government hands and place them in those hands where it belongs, thus restoring responsibility to the parents, who headed it first.

Fourth, would tuition tax credits cause division and hostility?

Division and hostility already exist in education. It began when Catholic schools were first cut out of adequate proportioned funding. Divisiveness is caused by secular humanists, Protestants, or any other group that forces a majority opinion on the schools, denying attention or educational opportunity to any who disagree.

Fifth, will tuition tax credits invite government intervention?

The point must be made that ideally government ought not to own or intervene in any of our Nation's schools. It does not have prior right to control these agents. The greatest government intervention today is in public schools it owns and operates, and into which most children are driven by financial pressure. By restricting tax money to government-operated schools, it forces a practical government monopoly on education.

Let's start here by restructuring the whole system of education in a proper pluralistic society instead of trying to hold back a monstrous power that is already greedy for control of even more of our schools.

Freedom is precious, but a frail possession. We must battle for religious and educational freedom as for all other basic freedoms of human life.

Senator **Durenberger**. Thank you very much.

[The prepared statements of the previous panel follow:]

TESTIMONY ON TUITION TAX CREDITS
PRESENTED TO THE SENATE FINANCE COMMITTEE
BY WILLIAM COATS

Mr. Chairman, Committee Members:

Thank you for the opportunity to comment on the President's tuition tax-credit proposal. We in education appreciate your continuing efforts to improve schooling and your interest in the views of professionals.

At the present time I am Professor in the Department of Administration and Supervision in the School of Education at The University of Michigan. Prior to joining the staff at the University of Michigan I had extensive public school experience. I was a teacher and coach in Detroit area public schools. I was superintendent for four and half years in Kalamazoo, a multi-ethnic community of approximately 100,000 people in Southwest Michigan. More recently I served as Superintendent for five years in the Grosse Pointe Public School System, a consolidated district serving six separate municipalities adjacent to Detroit.

In these roles I experienced the many inefficiencies inherent in the public school monopoly wherein survival is guaranteed through government funds and a captive audience. Because public schools have no real competition they need be only marginally responsive to their clients. Too often important educational decisions are attempts to please employees and other special interest groups and have little to do with what is best for students and taxpayers. As an example, consider the collective bargaining process where even in the depressed economy of Michigan, public school unions and board members seem oblivious to the high rate of business failures and wage concessions in the private sector. They continue to negotiate multi-year contracts in excess of ten percent per year, layoffs based on seniority, excessive fringe benefits, maximum class size, ad infinitum. There simply is no way that citizens in that state can support the levels of compensation and working conditions which have been negotiated.

Other deficiencies common to many public school districts include top heavy administrative staffing, self-serving board members and management systems which reward mediocrity and discourage excellence. As a result, such basic conditions as physical safety and an academic environment often are not assured. Consequently, public schools are experiencing increasing taxpayer dissatisfaction and parental alienation.

So those who argue that the survival of public schools is in jeopardy are correct. The question is, "why are they in jeopardy and what is the remedy?" Perhaps they are in difficulty because of their monopolistic nature - a condition which plagued the automobile industry prior to meaningful competition. In both cases (the automobile industry and public education) "management" gave away too much at the bargaining table, became burdened with unnecessary layers of supervisors and tolerated shabby employee performance.

What is the solution? It is not more tax dollars or greater protection for the public school monopoly. These would only hasten its decline. Rather, public education must be improved and saved. In this regard the introduction of some reasonable free-market concepts such as freedom of choice and competition have great potential. The President's tuition tax credit proposal could provide a financial basis for increased parental choice and therein provide the catalyst of competition necessary to improve both public and non-public schools.

As has been demonstrated by a number of reputable studies, non-public alternatives on the whole are operated at less cost and in many cases with better results than their public school counterparts. The reason for this relative cost effectiveness is due to the fact that non-public schools must compete for clients and revenues. They must produce a quality product for reasonable costs in order to survive. Should not public schools have the same opportunity?

Increased freedom to choose is especially important for the less affluent since the wealthy already have it. Tuition tax credits, while insufficient to generate substantial equity and freedom for parents, would be a positive step in making educational choice available to more families than is now the case. Such tax credits would lessen the double tax burden on parents who choose to send their youngsters to a school they view to be particularly responsive to the educational aspirations and values of the family.

The near hysterical knee-jerk reaction of the public school establishment contends that tuition tax credits would ruin public education, presuming that the rather moderate credits proposed by the President would result in a mass exodus from public schools. Of course, such a reaction is nonsense! Most public schools would compete quite favorably for students. It is true that some public schools may through increased competition from non-public schools be forced to improve (i.e. be more sensitive and responsive to parent and student needs) in order to survive. If these schools improve they will survive. If they do not improve, they may not survive and some tax dollars will be saved. In either case, the result is fair and appropriate in a free society. Unlike some essential public services, educational institutions should not require a captive audience in order to survive. Survival should be based on performance and client satisfaction.

In conclusion, I urge your favorable consideration of the President's tuition tax credit proposal. Its adoption would have great potential for improving the quality of education in this country, especially in regard to that offered by public institutions. Furthermore, its adoption most certainly would increase educational choice for most of our citizens. In America we advocate liberty and justice for all. Let us apply this commitment to education as well.

Thank you

STATEMENT OF PATRICIA EUBANKS, NEW BRUNSWICK, N.J.

SUMMARY

The present system by which government funds education denies a real choice to many middle and low income families of all races.

Government guarantees a choice in education to all families but imposes a financial penalty if they choose anything but public education.

While many parents make sacrifices so that their children can get the kind of education which they believe is best for them, many others cannot achieve this goal.

Families whose children attend non-public schools support a strong public school system also.

My name is Patricia Eubanks and I live in New Brunswick, New Jersey. In beginning, I want to thank the members of the Senate Finance Committee for the opportunity to speak here today. I have come because I believe that education is among the most necessary of the key elements needed for a successful future. I am here also because I believe that the issue of tuition tax credits for families of non-public school students is so important.

My graduation from St. Peter's High School in June marked the completion of thirteen years of Catholic education. It also marked the fourth time a member of my family was graduated from Catholic high school. To understand the sacrifice involved in my parents' choice of non-public schools for their children, the Committee should know something about my family, about what we value and about the community in which we live. I say this not because one family's experience is extraordinarily significant but because I believe our family experience is repeated by so many middle and low income families of all races all over our country.

I am the fourth of five children of Leo and Georgia Eubanks. My father is employed as a machine maintenance worker by Johnson & Johnson, the largest employer in the city of New Brunswick, New Jersey. My mother is employed by the New Brunswick Board of Education as a para-professional. I was born, raised and educated in New Brunswick. My parents own our home there and my mother is a leader in the Neighborhood Committee and has been active in the St. Peter's High School Parent-Teacher Association.

New Brunswick is a rapidly changing city. Construction projects dominate the downtown section and are looked upon as outward symbols of new promise for the city.

Within the city are two high schools: my alma mater, St. Peter's and New Brunswick High School. I am not here to criticize the public school system.

Many of my friends are graduates of the public school and their experiences appear to have worked out for them. For many of them though, the advantages or disadvantages of the system were not significant in their choice of the school system because they had no real choice, no alternative, no option. This is because, while government guarantees parents a choice in the education of their children, it imposes a financial penalty on those who choose anything but public school. Thus, many poor and middle income families really do not have a choice.

Fortunately, my parents were able to exercise their choice. They wanted something more than the math, English, history and other subjects that are taught in the public schools. They wanted an education with a philosophy consistent with their own. Consequently, three of us, my brother Paul who is twenty-eight, my brother Christopher, who is twenty-two and I - I am seventeen- were educated at and graduated from St. Peter's. My brother Joseph, who is nineteen, was graduated from St. Joseph's High School in Metuchen and my youngest sister, Cynthia Rose, will enter St. Pius High School in Piscataway next September. My parents selected Catholic schools in general because of their philosophy of education and different schools specifically because of the different personality and needs of each child. They always try to do what is best for the particular child at the particular time.

The cost of their commitment in terms of hours worked overtime by my father and vacations foregone by our whole family, among other things, is never mentioned by my parents and we children only became aware of it as we grew older and, I hope, wiser. But we all knew that for my mother and father, raising five fulfilled achievers with strong moral beliefs was worth the financial sacrifice.

But now I must ask why such sacrifice was necessary and why a choice in education is impossible for so many families. I believe it is because the present method by which government funds education discriminates against hard-working families like mine who, when they prefer non-public education, must pay both taxes for public schools and tuition for their children. I must ask why government guarantees parents a choice and then penalizes them if they choose anything but public school. My family, and I think most families, support a strong public school system but we also support the concept of fair treatment of all students by government in the funding of education. If diplomas earned at non-public elementary and high schools are accepted by the state, then those families who choose them for their children should not suffer a financial penalty. This is why I am glad that tuition tax credits may, at last, become a reality. I know that a $500 tax credit would have made a big difference for my parents and for the parents of many of my friends

I came today because I want to try to make things different for people like my mother and father. I do not pretend to be a constitutional expert. I leave it to others to argue the letter of the law. I know that if tuition tax credit legislation is passed now it will mean little to my parents who have already sacrificed so much. But it will help many other families like mine and if my sharing our experience with you helps to achieve that end, it will have been well worth the effort. Thank you very much.

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Rev. Charles Mims, Jr., Minorities Director
Pat Monahan, Assistant to the President
Mike Evans, Advisor on Middle East Affairs

Is there not a cause? I Samuel 17:29

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July 14, 1982

TUITION TAX CREDITS - E. E. McAteer

My concern over the issue of tax credits is not to find a way to get extra money for Christians who support private schools. My basic concern is one of justice. America needs to find an equitable arrangement for educating the youth of our land.

We must begin by looking at the whole structure of our American system of education. Who is responsible for the education of our children? As evangelical Christians who take the Bible seriously, I think most of us would have to say that parents have primary responsibility for the education of their children.

Up until the 1840s, Americans assumed almost without question that education was the concern of parents. For the most part, schools were not state supported, state founded, or state initiated.

The state of Massachusetts became involved in education only when officials perceived that some parents were not adequately teaching their children the three Rs. Where the primary parental responsibility failed, or for some reason was impossible, the government had a *secondary*responsibility and on the basis was to step in to fill the gaps. Officials were particularly concerned about the educational needs of orphans.

A variety of schools emerged at this time: church schools, schools founded by associations or groups of people, and schools we might call public schools in the sense that they were founded by some public authority though not necessarily established by a state government. But in all this variety, parents were still assumed to carry principal responsibility for the education of their children.

Many christians who take their religious convictions seriously are deeply troubled by what they see happening to their children. They perceive public schools today as dominated by a secular, humanistic philosophy in open conflict with Christian convictions. A growing number of parents, therefore, are pulling their children out of these schools and placing them in the mushrooming numbers of private schools.

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Many christians are now suddenly concerned about the kind of influence the public schools bring to bear on their school children. They now wonder whether the neutrality of education in the primary and secondary years of public education is really a myth. Perhaps we cannot now expect the American people to accept biblical doctirnes and biblical values.

But if we have agreed that the general citizenry should directly control public schools including or excluding what they want in them on a majority basis then as Christians today we should not complain if secular humanism dominates the schools. If a secular humanistic philosophy of education is what the majority wants, then secular humanism will dominate our schools and ultimately warp our children. Those who abrogate their parental responsibility for the aducattin of their children and give that right and responsibility to the government cannot object when their children are molded by an anti-Christian philosophy of education.

Today, we have two principals vying for authority over education: the state or government or community, with its elected school board, and parents. Parents have the right to opt out of governmental responsibility if they want, but only if they pay their own way. THey must also continue to pay the governments's way.

We must go back to the basics in education in order to find a better way in America. We propose that government should no longer view itself as holding the primary responsibility in education, but that it is parents who should be responsible for the education of children. Government should view its role in education only as a secondary principal working toward the equitable, proportioned financing of all agents of education that offer themselves in society. If parents, citizens, or communities are unable or unwilling to educate everyone, then government whould be asked to provide its own schools. But government schools should then not be viewed as more ligitimate or worthy of receiving public money than other schools. Rather, they should be on an equitable basis with them.

As government is not the only agent of education today in our nation it should not therefore continue to be the only recipient of public funds for education.

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1. Are tuition tax credits really unconstitutional?

The problem is that the Supreme Court does not now have, nor has it ever had, a clear, unambiguous position on this issue. Though there may have been a ruling against tuition tax credits in 1973, since the 1940s tht Court has gradually come to support all kinds of federal aid to private schools.

The Court has failed to rule in education with respect to the question of free exercise. The American government requires by law, under threat of fines or imprisonnment, that its citizens educate their children. But if CHristians in this country have freedom by law to practice their religion, and part of that practice includes the way they educate their children, then the only practical and realistic way to permit the free exercise of religion is to enable Christians to finance for their children the kind of education that is consistent with their religion.

2. Would tuition tax credits harm public schools?

The argument posed by this question has a familiar ring. Before the American Civil War, some slave holders argued: "We cannot abolish slavery or the southern economy will suffer." Now, abolition of slavery may have caused economic hardship in the South, but the question of slavery was not one to be answered in terms of economics. A basic human right to freedom was at stake.

Today basic parental rights and religious freedom are at stake. If tax support for public schools places a heavy financial burdon on people of strong religious convictions and denies them for all practical purposes their basic parental and religious freedom, such exclusive tax support is unjust. The encouragement of parental involvement and participation in public education is beside the point. Of course Christians should involve themselves in public education systems. We all want our fellow Americans to be educated, and we want to live in a society of well-educated people. But that does not change the fact that a Christian who wants his own children instructed in Christian values ought not to be penalized because of his CHristian convictions.

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3. Do tuition tax credits encourage fiscal irresponsibility?

One of the biggest bureaucracies in government today, though much is at the state and local level, is the educational bureaucracy. This is the place to start to solve the problem of too much red tape and government spending in education. Proper pluralization of education would take its agents and principals out of government hands and place them in those where it belongs, thus restoring responsibility to the parents, who had it first.

4. Would tuition tax credits cause division and hostility?

Division and hostility already exist in education. It began when Catholic schools were first cut out of adequate proportioned funding. Divisiveness is caused by secular humanists, Protestants, or any group that forces a majority opinion on the schools, denying attention or educational opportunity to any who disagree. Injustice not Christian values, is the root of bitterness and hostility. And if we wish social peace in our nation, we had better begin to structure our education system so that CHristians can train their children early on in the simple vitures and biblical values of truth telling, purity, the sacredness of life, the law of God, the holiness and love of God, divine judgment upon evil, and the beauty of divine and human grace. And others should be free to educate their children as they think best.

We do not advocate direct subsidy of schools as such. We do advocate that the government furnish education for a child's parents to provide an education consistent with their religious convictions and not force them practically to educate their children in accord with a philosophy of education that is antagonistic to their Christian convictions.

5. Will tuition tax credits invite government intervention?

The point must be made that, ideally, government ought not to own or intervene in any of our nation's schools. It does not have prior right to control these agents. The greatest government intervention today is in public schools it owns and operates and into which most children are driven by financial pressure. By restricting tax money to government-operated schools it forces a practical government monopoly on education.

If we are trying to get rid of government intervention, let's

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start here--by restructuring the whold system of education in a proper pluralistic society instead of trying to hold back a monstrous power that is greedy for control of even more of our schools.

Freedom is precious but [illegible]ail possession. We must battle for religious and educational freedom as for all other basic greedoms of human life.

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Senator DURENBERGER. Senator Bradley?

Senator BRADLEY. No questions, Mr. Chairman, other than to thank Ms. Eubanks for her testimony. I think that it is always very important to hear someone who has experienced things directly, and I think you made an eloquent statement today.

Senator DURENBERGER. Let me just ask you both one question, and then we have to go over and vote.

One of the attributes of this kind of legislation, not necessarily just for this bill but others, is that it is supposed to foster needed competition between the public and private schools. I don't necessarily agree that that is an appropriate thesis upon which to premise tuition tax credits; I like the thesis that Ms. Eubanks gave us better. But in the notion of competition, what is wrong with competition between public schools?

Mr. COATS. Well, I would support competition among public schools as well, which we have none of now. The only way you have competition among public schools is if your family has enough money to move into a community which might have the school system of your choice. So there is that kind of competition, but only by moving.

Senator DURENBERGER. That is the basic source of choice in the public school system today, is it not, particularly at the elementary and secondary level?

Mr. COATS. Where you live. That's the choice.

Senator DURENBERGER. And is that true all over the country?

Mr. COATS. Yes. The government assigns—well, the public school system tells you what school your child goes to.

Now, there are some exceptions. We had what amounted to an in-district voucher plan during my 5 years in Grosse Pointe. We told people: "Send your kids anyplace you want to send them." And that did effect some intradistrict competition, which we thought was positive. But I think public school people should not be afraid of opening that up to a broader group, including other public schools as well as nonpublic schools.

Senator DURENBERGER. Is it your testimony, then, that there are a lot of opportunities to improve the quality of public education in this country besides denying tuition tax credits on this sort of basis to private schools?

Mr. COATS. Would you say that again, please?

Senator DURENBERGER. Is it your testimony that this Nation has a lot of opportunities to improve the quality of education in this country that it hasn't yet tried, other than just denying a tuition tax credit to private school students?

Mr. COATS. Certainly, and I think it is very important that we do that.

Senator DURENBERGER. Thank you very much.

Thank all of the panelists for being here. I'm sorry we have to run off to vote, but we thank you all for the preparation and your presentations.

The hearing is adjourned.

[Whereupon, at 3:15 p.m., the hearing was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

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July 28, 1982

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The Honorable Robert Dole
U.S. Senate
Washington, D.C. 20510

Dear Senator Dole:

The American Federation of State, County and Municipal Employees (AFSCME), a labor union representing more than one million public employees nationwide, takes this opportunity to comment on S.2673, the "Educational Opportunity and Equity Act of 1982," the Reagan Administration's Tuition Tax Credit legislative initiative. As an organization whose membership includes many non-teaching personnel in public schools, we oppose this bill which provides tax credits for tuition at private elementary and secondary schools.

Tuition tax credits are economically unsound. S.2673 allows parents in certain income brackets (up to $[illegible],000 gross income) to take credits equal to half of private school tuition costs up to a maximum of $100 per child in 1983, $300 per child in 1984, and $500 per child in 1985. During this time of fiscal restraint, severe budget cuts to domestic social programs and tax breaks for the rich, tuition tax credits would reduce federal tax revenues by approximately $4 billion over the next five years. Such an expenditure would be both inflationary and economically unfortunate. Moreover, it is inconceivable that the same Administration that has proposed huge cuts in funding for federally funded elementary and secondary programs such as Title I and Handicapped Education, also supports a tax credit for parents sending children to private schools.

There are also serious constitutional questions surrounding the tuition tax credit initiative. Since most of the tuition aid would go to students in church-connected schools, and since religious schools or parishes would be

in the public service

advancing religion at the public's expense, tax credits could violate the Constitutional principles of the separation of church and state contained in the First Amendment.

With respect to civil rights, while S.2673 provides that parents who choose to send their children to schools which discriminate on the basis of race, creed, or national origin could not claim the credit, there is a concern that the enforcement provisions in the bill are not adequate since they would shift the burden of proof from the suspect schools to individual complainants.

Most importantly, though, are the public policy implications raised by tuition tax credits. Tax credits undermine America's traditional system of universal public education. Credits give private schools an unfair competitive advantage over public schools, since private schools can refuse to offer services that public schools must provide and because private schools can be more selective with regard to whom they admit.

Additionally, tax credits would induce an educational caste system by drawing middle and higher income children into private schools and leaving the difficult and expensive-to-educate children behind.

AFSCME believes that education is a basic, fundamental public service. As a union of public employees dedicated to providing efficient and quality service, we urge you to oppose any tuition tax credit proposal.

We would appreciate your inserting this letter as part of the official hearing record.

Sincerely,

JOSIAH H. BEEMAN
Director of Political
and Legislative Affairs

JHB:sj

STATEMENT FOR THE RECORD

ON

S. 2673, THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982

BEFORE THE

SENATE COMMITTEE ON FINANCE

SUBMITTED BY

AMERICAN ASSOCIATION OF COMMUNITY AND JUNIOR COLLEGES
AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES
NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

July 23, 1982

On behalf of 1,600 public two and four-year postsecondary institutions enrolling 80% of the students currently enrolled in higher education (nine million students), we appreciate this opportunity to submit for the hearing record the views of our members on S. 2673, the Educational Opportunity and Equity Act of 1982.

The public sector of higher education is unanimous in its opposition to any tuition tax credit legislation. The National Association of State Universities and Land-Grant Colleges (NASULGC), in an official Board position, has stated that tax credits are regressive, unnecessary and costly. The American Association of State Colleges and Universities (AASCU) has voted to urge rejection of any tax credit legislation. And the American Association of Community and Junior Colleges' (AACJC) Board of Directors has taken a stand against tuition tax credits as a mtter of public policy.

In short, all three associations are on record opposing tuition tax credit legislation, particularly those which would provide a credit for postsecondary education. Although the legislation before you only provides a credit to families who choose to enroll their children in private elementary or secondary schools, we are concerned that this initiative would lead to tax credits for higher education, as President Reagan and other supporters have indicated. Thus, we totally oppose the concept on any level of education -- elementary, secondary, postsecondary or graduate. We believe it to be unsound economic and education policy.

At a time when we are experiencing overall budget reductions, we feel that S. 2673 is extremely ill-timed. The proposal is projected to cost approximately $4.5 billion over three years -- a cost that our nation simply cannot afford. Congress has already cut federal aid to education and social programs by 30 percent in the last two years in an effort to reduce the federal deficit. The additional revenue lost to tuition tax credits could impose further, even more drastic cuts on these programs in the future. Also, at a time when this administration is attempting to limit Federal education spending to the most needy in our society, it is absolutely ludicrous that this legislation would assist families with up to $75,000 income.

From an educational policy standpoint, S. 2673 is totally lacking in merit. The Federal government simply should not be in the business of providing a tax credit to wealthy families who can afford to send their children to private schools. This policy would imply and, in fact, endorse the rejection of our national philosophy of a strong public school system and would undermine continued support for it.

Moreover, S. 2673 does not include a refundability provision. In order to be eligible for a credit, a taxpayer would have to have an income tax liability at least equal to the amount of the credit. This provision effectively eliminates participation of many low-income families who would not be able to benefit from the credit even though they might have children attending private schools.

We are also concerned about the meager non-discrimination provisions contained in S. 2673, which are supposed to provide assurances that the tax relief afforded would not be used to promote racial discrimination. In our view, these assurances are extremely tenuous and could easily be circumvented by some institutions considering the bill's perfunctory enforcement provisions. These particular provision must be rejected by the Committee in favor of a more straight-forward and explicit prohibition against discriminatory practices.

In sum, Mr. Chairman, we strongly urge you to reject S. 2673 and any other tuition tax credit initiatives which come before your committee in the future. The Federal government needs to support the educational opportunities provided by public institutions at all levels of education. In our view, tuition tax credits would seriously erode America's commitment to public education and in doing so, would jeopardize the future educational and economic needs of our nation.

The American Jewish Committee
Institute of Human Relations · 165 East 56 Street, New York, N.Y. 10022 · 212/751-4000 · Cable Wishcom, N.Y

Testimony of the American Jewish Committee
on
S. 2673, tuition tax credits for
non-public schools,
submitted to the Senate Committee on Finance
July 21, 1982

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JOHN H. STEINHART, San Francisco ■

The American Jewish Committee, a 75-year old human and intergroup relations organization with over 40,000 members from all parts of the country, representing a wide spectrum of viewpoints on civic and Jewish communal issues, opposes S.2673 which provides tax credits for tuition paid to non-public elementary and secondary schools.

We agree with Treasury Secretary Regan that parents have a fundamental responsibility to direct the education of their children in a way that serves their individual needs and aspirations. We thus support the existence of a diverse range of schools to insure parents a choice of alternative but equally legitimate educational opportunities. However, we believe that it is not appropriate and, indeed, may be unconstitutional, for the Federal government to provide financial assistance to parents of private school children in pursuit of this objective.

First, when the Federal government legislates tax benefits, it also imposes obligations. It is specious to argue, as does Secretary Regan, that tax credits would guarantee the independence of non-public schools since no Federal department will be involved in a funding capacity. Federal controls invariably follow Federal funding.

For example, the "triple anti-discrimination enforcement mechanisms" provided for by this legislation, which involves both the Internal Revenue Service and the U.S. Attorney General, necessarily involve the Federal government in the policies and practices of private schools. While we applaud all attempts to eradicate government-aided or government-supported discrimination, we fear the resulting government encroachment upon other related parochial values that will necessarily result from such safeguards.

In the context of private religious schools, such government involvement is constitutionally defective. In Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973), the Supreme Court held, inter alia, that a New York statute providing for tuition reimbursement and state income tax relief to parents of children attending non-public elementary or secondary schools violated the Establishment Clause because both forms of aid had the impermissible effect of advancing religion. While the Court sympathized with the burdens experienced by those who must pay public school taxes at the same time that they support other schools, the Court held that this did not justify "an eroding of the limitations of the Establishment Clause now firmly entrenched." Id. at 788. Although the Court was not required to address the issue of whether such aid would result in excessive government entanglement with religion, the importance of the issue prompted the Court to observe that, "apart from any specific entanglement of the State in particular religious programs, assistance of the sort here involved carries grave potential for entanglement in the broader sense of continuing political strife over aid to religion." Id at 794.

Second, while we, like the Supreme Court, sympathize with the plight of those parents subject to dual tuition responsibilities, we see no reason to carve out an exception for such parents. The very foundation of public education is that it is a communal responsibility. People whose children are grown pay school taxes for their neighbors' children and grandchildren; people who have never or not yet had children pay school taxes. Would it not be logical, under a tax equity theory, to provide a tax credit to these people as well?

Finally, we cannot reconcile this proposal to divert tax dollars for private education at a time when public schools are being forced to absorb cuts of Federal funds designed to aid the poor and disadvantaged public school students.

The further eroding of public school support by the community as tuition tax credits encourage greater private school attendance, together with these cuts in Federal funding to public schools, will seriously hamper the ability of the public schools to provide continuing educational improvement and excellence. Such a weakening of the public school system, which has served as an important basis for perpetuating the pluralistic and democratic values so fundamental to our society, could have far-reaching implications. Indeed, tuition tax credits could represent the first step in a radical change in the very nature of American education and American public policy and decision making.

Marilyn Braveman
Andrea S. Klausner
July 21, 1982
82-620-35

STATEMENT OF MRS. MARY ANN BABENDRIER

My name is Mrs. Mary Ann Babendrier. I am the parent of thirteen children who have all attended parochial elementary and secondary schools. I have had children in the parochial school system for the last twenty-one years. My husband is employed by the Federal Government and in the early years of our marriage held two jobs in order to meet tuition, school transportation and other school expenses. Although several of our children are now in college or have completed their formal educational training, our school expenses last year were in excess of $7,000.00.

My husband and I believe that education must deal with the total person and religious education is essential to this concept. We believe that religious education reinforces home religious training and gives the individual sound principles for moral decision making.

Thirty years ago the climate of society was much different than it is today. We are concerned more than ever that education offer discipline and moral principles for decision making. I urge your support of Tuition Tax Credits to offer assistance to parents who wish to send their children to a nonpublic private or parochial school. My husband and I firmly believe it is a constitutional right to receive such support.

Testimony
by
Mrs. Helen W. Brice

Good Afternoon:

My name is Mrs. Helen Brice. I am a retired school teacher from the D.C. Public School System. I taught for twenty-two years in that system. My two daughters began their formal education in public schools.

Despite considerable opposition from my fellow teachers, my husband and I decided to enroll both children in private schools. We did so because private schools teach moral values and help students make decisions which assist them in coping with the many conflicts they will face in daily life, especially social, racial, and moral conflicts. In addition to this, private schools have an atmosphere of discipline, uncommon in most public schools, and are able to advance students to grade level or beyond.

Although my daughters are now out of college, I urge the support of Tuition Tax Credits because this would afford many more parents with low income assistance in choosing a nonpublic school education for their children.

During the summer I teach classes in enrichment courses in a private school. About 90% of the students are from public schools and they give up their vacation time to attend this program because it offers them curriculum material in reading, math and English that they were not able to grasp during the school year. Public school teachers have told me that students who attended this summer school achieved more in their classes than students who did not attend. They asked that it be continued.

My husband and I sacrificed to send our daughters to private schools with no assistance. I hope in the future parents will have assistance to help them make a choice in the education they wish for their children.

Testimony

by

Mrs. Barbara Fields

Good afternoon, my name is Barbara Fields. I am the single parent of two (2) children, a daughter age sixteen (16) and a son age thirteen (13). We moved here from New York State (Westchester County) eleven (11) years ago. I have worked for the Singer Company for twelve (12) years, and am now store manager for one of the local branches, making approximately $13,000.00 a year.

My daughter did attend public schools here in Washington for three (3) years, when I and other school officials noticed a change in her attitude and her grades, even though she came from one of the best public schools in Larchmont, New York.

The school principal, knowing the potential she had, advised me to put her into a private school. She attended Our Lady of Victory School the rest of her elementary years, and is now attending Immaculate Conception Academy. My son is attending Our Lady of Victory and is going to attend a Catholic High School.

You do not know how rewarding it has been for me to know that my children are getting the best education that I can give them. They have had to do without many things because I could not afford to give them to them due to the high tuition cost, uniform expenses, transportation expenses, not to mention registration fees and book fees.

I think I would move from this area if my children had to attend public school in Washington. Teachers in the parochial schools show more individual attention, take more time, and let you know right away if something is wrong.

Example: Dawn had to go to summer school for math. She did, and is now a "B" student in math. This could never have taken place in a public school unless big changes are made within the public school systems.

The Tuition Tax Credit would help me and other parents to further their education and to give my children and other children an incentive to learn.

Thank you.

# # # # # #

Testimony

by

Mrs. Lydia Jones

For me to be privileged to address this Committee is indeed satisfying. For years I have entered voting booths, pulled levers and wondered if anyone really cared to hear my thoughts on any issue.

My name is Lydia Jones. I work for Batelle Columbus Labs Washington Operations Office. I am the mother of, and have responsibility for, seven children ages six (6) to fifteen (15). Five attend St. Margaret's School, one St. Patrick's Academy and one Mackin Catholic High School.

I choose to sacrifice to keep them there because I believe it is an investment that will bring dividends that will last a lifetime for them and for me. I am not materially wealthy, but I will continue to try to keep them in parochial schools.

To paraphrase Safeway Stores slogan, you get everything you want from a school and a little bit more. They are on the receiving end of genuine concern and love and I watch as they in turn, learn to care about others as well as themselves. They do without unnecessary things, usually, but not always, without complaints, because each in his or her own way understands the sacrifices entailed in keeping them in Catholic schools. They want to be there, I want them there and passage of this Bill would aid me and other parents in continuing to provide this opportunity.

Testimony

by

Mrs. Carmen Madden

I am Mrs. Madden. I am Puerto Rican. I am a housewife. My husband works at Goddard Space Flight Center. I have five children ranging in age from 5 to 10 years. My three oldest children attend Sacred Heart School. My youngest two attend public school. I am Chairman of the Neighborhood School Council for the public school my children attend. I pay approximately $1,700 per year tuition for my three oldest children.

Both my husband and I attended parochial school. I started my children in the public school system because when my oldest child was 5 years old our local parochial school did not have a kindergarten. I kept the children in public school until the 2nd grade when I determined that the public school education was not adequate. When the children were first transferred to the Catholic school their scores on the national SRA test were below grade level. After being at Sacred Heart School for a year, their scores went up above grade level.

I want my children to attend a Catholic school that supports my own philosophy and moral values and provides adequate discipline. The children themselves prefer the Catholic school to the public school.

Because most of the parents at Sacred Heart School have to sacrifice to pay their children's expenses, the pastor established a program by which parents could deduct a certain amount of the tuition if they worked on school projects.

Since our five children are so close in age, expenses for their education becomes substantial as they advance in school. We therefore, ask that you please support Tuition Tax Credits. Thank you.

Testimony

by

Mr. Richard Sylvester

Good afternoon, I am Richard J. Sylvester. I work for the United States Department of Commerce, Office of the Secretary, 14th and Constitution Avenue, N. W. My annual income is $16,406.00. I support my wife and four children, three of school age. My older daughter, Angela attends St. Cecilia's Academy. The tuition at St. Cecilia's Academy is approximately $1,000. Although we received a grant, we pay a balance of $775.00 plus books, uniforms and other expenses that accrue over the school year. St. Cecilia's Academy is not in walking distance for Angela; transportation and lunch are added expenses. $1.20 for the bus ride and $1.75 for lunch.

Richard, my older son, and Kelly Teresa, my younger daughter, attend Assumption Catholic School, both on scholarships or grants. For Richard and Kelly there are books, uniforms and miscellaneous expenses. They too must ride a bus to and from school and must bring and buy part of their lunch.

Over the years I have cut corners and sacrificed even the necessities to keep my children in a parochial school. I can visualize even more difficult times in the future with the rising cost of living.

I am deeply concerned for my children's education. I have experienced both the public and parochial school systems. I attended parochial school in the State of Louisiana from grade 1 through 8. At the parochial school there was discipline and a very high quality of education. There, the teachers were concerned with education and teaching respect. Making the transition into the public school was not an easy task. Very quickly I learned the teachers were concerned about their paycheck, not your education. Even then the old statement was popular, "I got mine, you get yours."

When I graduated from that public high school I went to the University of Southwestern and realized I was only an average 10th grade student.

I would not want my children to experience what I did. I would like them to have the type of education that would enable them to enter a University and live productive lives. For that education I chose the parochial schools, because of my experience.

I am deeply in favor of the tuition tax credit bill.

Thank you.

STATEMENT OF THE
BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

ON ISSUES RAISED BY S. 2673 CONCERNING TUITION TAX CREDITS FOR PARENTS OR GUARDIANS OF ELEMENTARY AND SECONDARY STUDENTS

UNITED STATES SENATE
COMMITTEE ON FINANCE

July 20, 1982

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These groups have a current membership of nearly 27 million.

Through a concerted witness in public affairs, the Baptist Joint Committee seeks to give corporate and visible expression to the voluntariness of religious faith, the free exercise of religion, the interdependence of religious liberty with all human rights, and the relevance of Christian concerns to the life of the nation. Because of the democratic structure of individual Baptist churches and conventions, we do not purport to speak for all Baptists.

However, the Baptist Joint Committee, as well as its member Baptist denominations, has spoken strongly against the use of public funds to support either directly or indirectly religious institutions or schools which are operated for religious purposes or which teach religion as an integral part of their curriculum. We contend that S. 2673 does aid indirectly such religious institutions and schools and, therefore, we are compelled to oppose the bill for legal reasons. Furthermore, we oppose tuition tax relief on public policy grounds.

The Legal Bases of Opposition

The First Amendment to the Constitution of the United States forbids Congress from making any law "respecting an establishment of religion." The Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 at 612 (1971), explained that "A law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." A tuition tax relief bill applicable to tuition paid to schools which are pervasively religious is properly classified as "respecting an establishment of religion."

No one seriously questions the raison d'etre of parochial schools. They were established and continue to exist for religious reasons.

In an article, "Why Catholic Schools?," Father Christopher O'Toole, S.C.S., stated:

The purpose of the parochial schools is to permeate with the

> Faith and the spirit of the Gospels the total educative process. In a parochial school the teaching of religion, for example, is not simply just another subject to be learned and which is not taught in the public schools. No, the entire curriculum is to move forward in an atmosphere of faith in order to produce a pupil who knows, at least in an elementary way, how to relate all knowledge to its ultimate source -- God himself. National Catholic Register, August 6, 1972.

> The courts have held:

> The basic purpose of denominational education is to foster and maintain the teachings of a denominational religion. The religious aspect of the curriculum must be the principal and dominant reason for the existence of such schools. Essex v. Wolman, 342 F.Supp. 399 (S.D. Ohio 1972), aff'd., 409 U.S. 808 (1972).

In a recent case, National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979), the N.L.R.B. was denied jurisdiction over certain secondary diocesan schools operated by the Roman Catholic Church. The Church argued that because its schools are religious the First Amendment makes it unconstitutional for a Board created by an act of Congress to exercise jurisdiction over its schools. The Court of Appeals for the Seventh Circuit accepted the Church's argument that its schools are religious and held that separation of church and state required that the N.L.R.B. not have jurisdiction over religious schools [559 F.2d 1112 (7th Cir. 1977)]. The Supreme Court denied the N.L.R.B. jurisdiction on different grounds, but it acknowledged the religious mission of the schools, quoting from Lemon, supra, 403 U.S. at 616:

> [P]arochial schools involve substantial religious activity and purpose.
>
> The substantial religious character of these church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid. (Footnote omitted.)

The Supreme Court made some distinctions between post-secondary and elementary/secondary education in Tilton v. Richardson, 403 U.S. 672 (1971), and permitted construction aid for secular programs at the college level which it would not permit at the elementary or secondary level. In Roemer v. Board of Public Works of Maryland, 426 U.S. 726 (1976), the Court, in a 5-4 judgment, repeated the distinctions found in Tilton and allowed state tuition grants to be used only in colleges which are not permeated by religion. The Court did not open the door for public aid to all colleges and universities; it repeated its interpretation of the First Amendment as an absolute ban on aid to religious programs. For example, Roemer (at 2345) declared that government may not "pay for what is actually a religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike."

The Supreme Court has established a three-pronged test to determine whether legislative acts are consistent with the establishment clause: (1) there must be a secular legislative purpose, (2) the effect of the legislation must be neither to promote nor to inhibit religion, and (3) the legislation must not excessively entangle the state in religion and must not be politically divisive along religious lines.

Even if we concede, for the sake of argument, that S. 2673 has a secular purpose -- enhancement of equality of educational opportunity, diversity, and choice and the granting of tax relief to those taxpayers who pay tuition to send their dependents to non-public schools -- this bill falls short of the constitutional mark on the other two tests.

Congress may not constitutionally do by indirection that which the Constitution forbids it to do directly. Tax credits to taxpayers with children enrolled in schools which are permeated with religion would have the effect of aiding religion in that they would make the taxpayer a mere conduit for public aid to religious schools -- aid which cannot be given directly or indirectly. To provide for such tax credits would constitute an act respecting an establishment of religion. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).

Tax credits to those taxpayers who pay tuition to religious schools would lead to an excessive administrative entanglement of government and religion. Administrators in the Treasury Department and the Internal Revenue Service would be compelled to make continuing determinations of the degree of religious permeation in the curriculum of a school in order, under Roemer, to determine whether tuition paid to a specific institution qualifies for a tax credit.

Further, many persons who are eager for the "relief" of tuition tax credits do not see where they lead. With government financial aid comes government control. It is inconceivable that Congress would authorize billions of dollars in tax expenditures to aid parochial schools without attaching conditions, requiring audits, and instituting controls over parochial educational programs. It is ironic that many of the same voices which demand an end to government intrusion into church life at the same time invite massive involvement in religious affairs in exchange for tuition tax credits.

A broader base of entanglement of yet a different character is presented by the divisive political potential of tax credits.

> Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. . . . It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.
>
> . . . political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Lemon v. Kurtzman, 403 U.S. at 622.

That such proscribed political divisions along religious lines are present with reference to proposed legislation on tuition tax credits such as S. 2673 was evidenced in the hearings held in both the Senate and House in 1978 and is apparent in the hearings of which this statement is a part.

From a purely legal standpoint we earnestly urge that, in any tuition tax relief bill reported, those schools which are permeated with religion be excluded from the category of "eligible educational institutions." Failure to do so would inevitably lead to judicial and political confrontation.

The Public Policy Bases of Opposition

Those people who are in the middle income brackets are acutely conscious of the tax burdens they bear. Those people who have children in schools which charge increasingly large tuitions are painfully aware of the costs they assumed when they made the choice to send their children to a particular school. Tax relief which is equitable and which is the product of an integrated policy determination would be welcomed by middle income Baptists. However, Baptists' traditional position in support of public education and our examination of S. 2673 require the Baptist Joint Committee on Public Affairs to oppose this bill for the public policy reasons which follow:

1. Tax relief provided for in this bill would do harm and achieve only marginal tax relief. The relief provided for the middle income taxpayer would be largely psychological. For the tax relief to be more than just psychological the maximum tax credit would have to be increased several times over. The passage of a bill granting tuition tax credits would open the door for divisive struggles to increase tax credits to a meaningful level. Even the income losses suffered by the government under S. 2673 would pose some threat to existing educational programs. The harm caused by eliminating or curtailing some of these programs will be discussed below.

2. Tax expenditures are real money expenditures even though they do not appear as a line item in a budget. Every dollar which government elects not to collect in order to support indirectly a specific program is, in essence, money spent on that program. It is hard to justify beginning significant tax expenditures in support of private schools (which are not a public responsibility) just when Congress is making significant cuts in the support of public education (which is a public

responsibility).

3. S. 2673 would give private elementary and secondary schools -- the overwhelming majority of which are religious -- a substantial advantage over public schools in recruiting and retaining students. Public elementary and secondary schools do not charge tuition and, therefore, there would be a disincentive for parents to leave children enrolled there when a tax advantage is available if their children are sent to private schools. Children of elementary and secondary school age are compelled by law to attend either public or private schools. The presence of tax credits would encourage students to enroll in and/or remain in private schools. The tendency would be for the less gifted, the troublemakers, the maladjusted and the poor to remain in the public schools. Much of the "melting pot" element of public education unfortunately would be lost. We must oppose a public policy which favors private schools over public ones.

4. The tax relief S. 2673 provides would soon be totally eroded by tuition increases at all educational levels. Schools would see the tax credits as the aid which they were really intended to be and would tend to raise tuitions to include the tax credit. The 1978 hearings produced statements by Senate co-sponsors that the purpose of tuition tax credits was to aid the financially troubled parochial schools. Thus the taxpayer would serve simply as a conduit for aid to predominately religious schools. If money must pass through nonessential hands to reach an intended final recipient, a less efficient system is created. It would be far more efficient to make direct grants to

those institutions which constitutionally may receive public funds.

5. Finally, we consider tax credits inequitable and regressive. Those taxpayers at the lower income levels will receive benefits at a rate far lower than their needs. Taxpayers with middle level incomes will probably receive the maximum tax credit and many with upper level incomes, without pressing need for financial aid, will receive amounts of little real significance to them but of significant cumulative effect on the costliness of the program. When this regressive aspect is considered in conjunction with the current curtailment of need-based federal educational programs, the inequities become even more apparent. Those who most need education to escape poverty receive the least help.

Conclusion

From the point of view of religious liberty and separation of church and state we oppose any tax credits which would directly or indirectly aid parochial schools in that they are essentially a part of the religious mission of a church. On the basis of public policy considerations we must oppose all forms of tuition tax credits. Thus we urge that this Committee refuse to recommend any tuition tax credit bill to the Senate.

SOUTHERN BAPTIST CONVENTION

New Orleans, Louisiana

June 15-17, 1982

RESOLUTION ON TUITION TAX CREDIT

WHEREAS, The Congress of the United States is considering legislation to give taxpayers a tax credit (that is, a direct subtraction from one's tax bill) for tuition payments, and

WHEREAS, The effect of such legislation would be of most benefit to those who could afford to finance their children's attendance at private schools, including elite schools, and

WHEREAS, Most private elementary and secondary schools are related to churches and exist to serve the religious mission of sponsoring churches, and

WHEREAS, Tuition tax credit legislation carries the potential of financing private education at the expense of public education, and

WHEREAS, The attorney general of the United States has issued an advisory opinion that such legislation is of doubtful constitutionality under the First Amendment, especialy with regard to tuition paid to elementary and secondary schools, and

WHEREAS, The Baptist Joint Committee on Public Affairs has opposed such legislation because of its threat to the principle of separation of church and state.

Therefore, be it **RESOLVED**, That we call upon President Ronald Reagan to reconsider his support of a tax credit legislation now under consideration by Congress.

Be it further **RESOLVED**, That we, messengers to the Southern Baptist Convention, meeting in New Orleans, Louisiana, on June 17, 1982, register our opposition to all tuition tax credit legislation pending in Congress, urge the Baptist Joint Committee on Public Affairs to continue to oppose such legislation, and express our concern over such legislation's threat to the First Amendment guarantees of non-establishment of religion and the free exercise of religion.

Adopted by the Southern Baptist Convention
June 15-17, 1982, New Orleans, Louisiana

Harold C. Bennett, Executive Secretary-Treasurer
Executive Committee of the Southern Baptist Convention

CATHOLIC LEAGUE for Religious and Civil Rights
1435 G Street, N.W. Suite 852 Washington, D.C. 20005
(202) 737-4496

TESTIMONY OF
ANTHONY F. CZAJKOWSKI
PRESIDENT, WASHINGTON CHAPTER
CATHOLIC LEAGUE FOR RELIGIOUS & CIVIL RIGHTS
TO THE SENATE FINANCE COMMITTEE
ON TUITION TAX CREDITS
JULY 16, 1982

The debate over tuition tax credits has been, for the most part, concerned with conflicting opinions about the practical effect this policy will have if it is adopted. Those questions are very important, and while I am firmly convinced that the adoption of a tuition tax credit will be a wise and socially beneficial policy, for the present I shall leave consideration of those practical aspects of the question for others to discuss, in order to focus attention on a point which is theoretical, but which must be at the center of any sound policy relating to education.

That point is the constitutionally guaranteed right of parents to take responsibility for the education of their own children. More than half a century ago, the Supreme Court declared that "the child is not the mere creature of the state," and on the basis of this principle, it struck down a state law that would have required all children to attend only public schools.

The principle which the Court enunciated in Pierce v. Society of Sisters is fundamental to freedom and fundamental to the democratic basis of our national existence. We do not live in a totalitarian society. Our government is not one which claims omnipotent powers over the lives of its citizens. It is, instead, a government of, for and by the people, and the hallmark of this has always been the high value we have placed on the freedom of citizens from coercive government action.

The education of one's own children is a sacred and intimate trust given to parents. If freedom of conscience has any meaning at all, it certainly must include the right of citizens to guide the mental and spiritual formation of their children. If the independence of families has any meaning, it certainly must include the right to make choices, consistent with the common good, regarding the education of one's own children.

It was in recognition of these principles that the Supreme Court ruled that the state may not take out of the hands of parents the decision about what kind of school their children shall attend.

I submit, however, that the current system of education financing bends these principles to the breaking point because it makes the freedom of parents to exercise choice in the education of their children contingent upon the ability to pay. Only those families who can afford to meet tuition payments out of their disposable, after-tax income can truly be said to possess any freedom of choice with respect to the education of their children. The millions of non-affluent families who are unable to afford the double burden of taxation and tuition are, in effect, deprived of the exercise of a constitutional right.

I find great similarity betweeh this situation and the institution of the poll tax, which existed in several states before it was eliminated by constitutional amendment. Under the poll tax, every citizen had a theoretical right to vote, to participate in the democratic process of self-government. But in reality, those citizens who were too poor to pay the price were deprived of this precious right and rendered second-class citizens. This institution was so repugnant to the democratic beliefs of the American people that we amended the Constitution to abolish it.

Yet today, all citizens theoretically have a right to choose the kind of school they want for their children. But if they cannot afford to pay tuition, after they have already paid throught their taxes for the maintenance of government operated schools, they are simply unable to exercise this choice.

In fact, the educational poll tax is even more discriminatory than the old electoral poll tax, for it discriminates in two ways. Like the electoral poll tax, it deprives the non-affluent of the effective exercise of a constitutional right. But, more specifically, it operates directly against those citizens who wish to educate their children in a nonpublic school, but are financially barred from making that choice. It is as if the poll tax had been waived for those too poor to pay, if they agreed to vote in favor of the party in power, but imposed only on those who wanted to vote against the party in power.

There are some who assert that one's child in a nonpublic school is simply a luxury, like buying a new car or taking a Caribbean cruise, and that the government therefore has no obligation to facilitate this choice. This comparison, however, is entirely invalid.

Parents have not only the right, but the legal responsibility to provide for the education of their children. If they fail to send their children to school they may be jailed or their children may be removed from their custody.

Since the government imposes this legal obligation on parents, it has a corresponding obligation to ensure that parents are effectively free to decide on the type of education their children shall receive. A failure to assure this right amounts, in practice, to the very coercion that was declared unconstitutional in the 1925 Pierce case.

The tuition tax credit is one method of helping to ensure that right. If it is passed, all citizens will still be responsible for supporting the government operated schools through their taxes, and no tax funds will be used to support any nonpublic schools. But those citizens who take responsibility for the education of their own children by enrolling them in nonpublic schools and by paying for that education out of their own pockets will no longer be required to bear such a heavy burden for exercising this right because some portion of their tax indebtedness will be eliminated.

This solution is less than perfect, because it will still leave many families unable to exercise their right to freedom of choice in education, and it still burdens the choice of nonpublic education with a financial penalty. But it will be a significant step in the direction of recognizing and protecting the rights of parents. It violates the rights of no one and, above all, it helps to protect the rights of a minority who currently suffer under a grievous injustice.

Prepared Statement of Frederick D. Crayton, Jr. 74 Madison Ave.
Jersey City, NJ 07306

I am a working parent of three children, two of them are school age. One is in the fifth grade the other one is in the first grade. They are acquiring the educational foundation that will prepare them for the future.

I am a home owner, living in the second largest city in the State of New Jersey with a population of 223,000 people. As a home owner and worker I pay taxes. I pay property taxes that help to support and administer many of the essential services that the city provides to its 223,000 residents. Once of these services my taxes dollars supports is the public school system. In the press and media this system is often referred to as the inter city school system, a system criticized for being unable or unwilling to meet the needs of its students for a multitude of reasons ranging from social problems to unstable economic conditions.

Whether the public school is justly deserving of this criticism, or is the victim of a society that has for too long found it easy to blame it's increase in crime, violence, and illiteracy on the public school system; I, the tax payer, find that my tax rate is increasing and so is the public school drop-out rate. Could there be a possible correlation between the two? Is my increased tax dollar going toward improving the quality of education or is it being used to repair the physical structure of the building damaged by vandalism and to pay higher teacher salaries:

I am a parent faced with a problem of providing the best educational opportunities available for my children. I have the foresight to know that because they are members of a minority group they must have a good educational foundation in order to compete in a competitive job market and to achieve a decent standard of living.

This sounds like the average complaint that you've heard so often from the American public, particularly that American who is fortunately, or unfortunately classified as working or middle class. The destinction is becoming less noticiable.

The only difference is that I am Black and classified as marginally middle or working class. The sound of my voice is muffeabled or ingnored by black leaders and the media. If only they would ask me I would tell them I ardently support the tuition tax credit because only the private and parochial schools have demonstrated that they can provide a quality educational system within the city urban environment. (reading level, number of kids who go on to college.) It is difficult but a willing scarafice that many minority parents are making as evident by the increase enrollment of black and other minority's in our catholic schools. We are carrying the burden of supporting two school systems.

We are not asking for anything that we don't deserve. Nor are we willing to allow you to push the tuition tax credit out of our reach with-out being heard. Your failure to pass the tuition tax credit you are casting a dark cloud over our hopes of a quality education, as well as keeping us in the back-ground of our nation's growth.

Therefore I humbly request the opportunity to present before you, a minority view point on the tuition tax credit.

STATEMENT OF PHILIP ELVE, PH. D, CHRISTIAN SCHOOLS INTERNATIONAL

Christian Schools International and the Council for American Private Education (CAPE) welcomes this opportunity to participate in these hearings on "The Educational Opportunity and Equity Act of 1982."

CAPE is a Washington-based coalition of 15 national organizations serving private schools at the pre-school, elementary, and secondary levels--approximately 16,500 schools enrolling nearly 4.2 million school children. These organizations, by enrollment, represent more than 85 percent of American private schools. Member organizations are nonprofit and subscribe to admission policies of non-discrimination with regard to race, color, or national origin. CAPE's members include: The American Lutheran Church; American Montessori Society; Association of Evangelical Lutheran Churches; Association of Military Colleges and Schools of the U.S.; Christian Schools International; Friends Council on Education; Lutheran Church-Missouri Synod; National Association of Episcopal Schools; National Association of Independent Schools; National Association of Private Schools for Exceptional Children; National Catholic Educational Association; National Society for Hebrew Day Schools; Seventh-day Adventist Board of Education; Solomon Schechter Day School Association; and the U.S. Catholic Conference.

CAPE urges passage of this Act. Today, more than ever before, our membership sees the nation benefiting from this encouragement to private education and to the private school parents who have sacrificed so much for the education of their children at great savings to all taxpayers.

James S. Coleman's recent study highlighted the nature and quality of private education, and by doing so, has given public policy makers a far clearer picture of why parents willingly deprive themselves of material goods so their children can be educated according to their faith and beliefs. The financial circumstances facing many American families today make it increasingly difficult for them to exercise this choice in the education of their children.

Our tax system is designed to do many things besides just collecting money. The system helps stimulate investments, farming, business, giving, and a lot more. Tax credits are presently allowed for such things as political contributions, children's day care, and energy conservation. In some states, tax credits are given for contributions to private colleges. The purpose of such tax credits is to encourage taxpayers to use personal funds in ways which help improve job opportunities or perform other public benefits. The private school parent's use of personal funds currently saves the American taxpayers approximately $12.5 billion a year. These parents also serve a significant public function in the process, namely the education of their children. That surely warrants a tax credit benefit.

In addition to such pragmatic reasons for tuition tax credits, some underlying principles also speak to American tradition and sense of justice. For example:

1. All families have the constitutional right to send their children to the school of their choice. For the vast majority of private school families, choice is religiously determined. For all of them, the choice is made on the basis of deliberate, careful family thinking. Such choice should be protected and encouraged.
2. The increasing cost of exercising that choice, primarily the result of

higher tuition costs in private schools plus the higher costs of family living (including property taxes) ... all accounted for by continuing inflation ... is putting a heavy fiscal burden on the majority of private school families. But all taxpayers would experience increased tax burdens if private school families could no longer afford that choice. It seems fiscally prudent to insure that the choice remains affordable.

3. The tuition tax credit represents a modest effort to relieve the family tax burden, while at the same time it gives new educational opportunities for some who have been thus far unable to exercise them; for those for whom it means the most, the poor. In this regard, a tax refundable addition to the bill would improve benefits to the poor and make the tax credit legislation more equitable.
4. Pluralistic education is a strength and an essential ingredient of a pluralistic society. Private schools and public schools alike always must be encouraged by an impartial government. Presently, public schools are totally supported by taxes, while private schools are constitutionally deprived of any direct support. That's hardly impartial! Tuition tax credits benefit individuals who use private schools, and in a small way counter the present government partiality and financial imbalance favoring those who choose public schools.

We advocate strong public schools. Along with James S. Coleman, we do not believe a tuition tax credit will significantly affect public school attendance. Nor do we believe it will negatively affect public school funding. Obviously, public school funding stands or falls on its own merits and does not depend on individual tax deductions or other federal expenditures. In reality, it is highly likely that federal and local funds for public schools would be increased if tuition tax credits become a reality. Private school people likely would be more able, hence more willing to support local public school millage proposals when they receive some form of tax relief through a tuition tax credit.

All of us at one time or another have witnessed the stimulating effect the new store in the neighborhood has on the old standbys. So it will be in education. Tuition tax credits will not diminish public school quality, rather, they will heighten its resolve to serve the public even better. Public schools will not be diminished by tuition tax credits because most Americans will still prefer public school education.

Tuition tax credits are needed to open the educational option to those of lower incomes. They are needed as a matter of basic democratic principles. They are needed because they will benefit American education, both public and private. Tuition tax credits are a preferred means of providing tax relief to those citizens most deserving of such relief, while helping American education at the same time.

There is a widespread misunderstanding about the economic circumstances of private school parents. Private schools educate American children from all strata of society. In fact, most families (62.7%) who send their children to private schools earn less than $25,000 a year. Slightly less than one-half (45.6%) report an annual income of under $20,000; slightly more than one-fourth (27%) earn below $15,000, and 11.2% have earnings below $10,000 a year. Significantly, 72% of private school families living in inner cities earn less than $15,000 per year. Of the children who go to private schools, 10% are members of minority groups.

The Black and Hispanic children who attend Catholic schools, the largest segment of the private school community, account for 20% of those schools' enrollment. The second largest segment of private schools, the Lutheran schools, reports a 14% minority enrollment classification. Private schools have increased their minority enrollment by 20% in the last two years, bringing it to 9% of the total. It has been realistically estimated that well over 150 million dollars in financial aid was used by private schools last year alone to facilitate minority students' attendance in private schools. It should be recognized by all that this Act is crystal clear, and CAPE's support of the bill depends on it, that tuition tax credits will not go to a parent whose child attends a school which discrminates because of race, color, or national origin.

The circumstances of private schools in this country are mixed. There are vast numbers of private schools, indeed those which make up the backbone of private education, which are not thriving. They are barely hanging on. These are the private schools in our major cities.

According to the latest (1970) U.S. Census Bureau statistics on 10 of the largest and oldest cities in the country (Detroit, Los Angeles, Chicago, New York, Baltimore, Philadelphia, Boston, Cleveland, Washington, and San Francisco), private schools enrolled an average of 20.43% of all the school children in those cities at that time. (The figures vary, running between 11.4% and 12% in Washington and Los Angeles, to between 25.2% and 34.3% in New York and Philadelphia.)

These data are crucially important. For just as in public schools, private schools have suffered some of the devastating effects of the middle class migration from our central cities over the past decade and a half.

It is our view that the future of these cities, the tax base which supports the public schools, the community stability and improvement, the health and safety services, the support of cultural, recreational, and, yes, educational facilities which made people want to live there in the first place depends on having a significant number of families use private schools.

One of the most troubling aspects of this legislation is the extent to which it is engendering hostility between public and private education. The enmity and misunderstanding between those two sectors is as long as it is unfortunate. I can speak for the leadership of my organization by saying that we wish nothing but success to our colleagues in public education. This legislation is not anti-public schools at all. If it were, we would not be interested in it.

Both public and private school supporters should keep in mind that both sectors are part of an amazingly diverse and rich national system of schools. They differ in every possible way--in degrees of autonomy, financing, goals, governance, enrollments, and pedagogy, to name only a few of the most important differences.

To make this system as vigorous as possible is to reinforce the strengths of each of its parts. For all serve the good of the whole, and the whole serves as does no other educational undertaking anywhere on earth, the diverse and voracious faith of our pluralistic society in the value and power of education.

In the light of these benefits to education as a whole, to the cities themselves, and to the democratic principles of choice which this bill would foster, the estimated $100 million first year cost of the bill does not seem significant at all. We hope this Committee and the Congress will recognize the overwhelming benefits to the nation and the principles it holds, and will act to overcome any reticence toward tax changes which may affect the budget. We encourage a long-range view. We are convinced that time indeed will prove that the enactment of this bill will not only benefit the parents of 5 million American students but will also benefit the entire nation in a multitude of ways.

In conclusion, we believe that from its earliest days this nation has benefited greatly because of the existence of private schools, giving the nation a rich tradition of pluralism and diversity. It is essential that we maintain the Constitutional rights of parents to choose the kind of education they want for their children. Because we find that right is threatened for an increasing number of private school parents, and because we are deeply concerned that this right cannot be exercised by the poorest of our society, we find this legislation to be an appropriate, if modest, step in the right direction, offering the same necessary equal educational opportunity already well established at the college level.

Thus, we support the Educational Opportunity and Equity Act of 1982 because it advances the cause of justice, pluralism, and equal educational opportunity, and it strengthens a national network of schools, public and private, which is the envy of the entire world.

Testimony
by
Leonard DeFiore

Introduction

I am Dr. Leonard DeFiore, Superintendent of Schools for the Archdiocese of Washington. Our school system, 115 schools, nearly 38,000 students is typical of many Catholic school systems throughout the United States. Our students come from backgrounds representing all strata of society. Approximately one-third of our students are black and nearly 20 percent are non-Catholics. In the District of Columbia itself, 70 percent of our students come from minority backgrounds, many of whose parents sacrifice mightily to have them attend our schools. The cost of our schools is modest at best--the per pupil cost in the elementary schools is nearly $700 per year and approximately double that in the high schools. Even such a modest cost, especially for a low or middle income family with several children, can be a severe financial burden. A 1979 study of inner city Catholic schools, which included Washington, D. C., indicated that more than three-fourths of the families had incomes under $15,000. You can imagine how much of a burden even modest tuition costs are for these families. It is to help these low and middle income families that I urge this committee to vote favorably on S. 2673, "The Educational Opportunity and Equity Act of 1982."

S. 2673 - A Parent's Rights Bill

This bill is not an educational bill; it is not primarily even a tax bill; in fact, it deals principally with a civil rights issue, namely parental rights. As Senator Moynihan observed during the 1978 debate, "this is a battle for parents rights in education, perhaps the last frontier of civil rights in this nation." This tuition tax credit bill is a response to the quest for that public tax policy which would best help parents perform their God-given and constitutionally protected right and duty as primary educators.

Although it is self-evident that the child does not belong to the state, it was necessary for the Supreme Court in its 1925 Pierce ruling to defend a corollary of this truth by explicitly guaranteeing parents the right to "direct the up-bringing and education of children under their control, and the right to satisfy compulsory education requirements in either a public or nonpublic school."

During the past 57 years, that landmark decision supporting freedom has become a hollow victory. As education costs increase and income taxation rises, more and more poor and middle income families must forfeit their constitutionally protected right of free choice in exchange for a free government provided education. Children whose parents cannot afford to pay twice for their education are being coerced to conform to the moral and religious orientation of government schools. Freedom of educational choice has become a function of wealth--a privilege of the wealthy rather than a protected right for all.

Now it may be true that a few wealthy doctors and corporate executives may benefit from tuition tax relief (as they now do from free public schools). However, the vast majority of beneficiaries will be middle and low income families. Most importantly, it would give the poor the same rights as the not poor--the ability (which differs from the theoretical right) to exercise their first amendment right to religious freedom. It is silly, under present circumstances, to tell the low and moderate income family that they have a government protected right to educate their children in a religious school but that the government will not permit them to use their taxes for that purpose.

In fact the United States remains virtually the only country outside the totalitarian orbit which deprives private school families of education tax funds. Let me share with you a list of countries in which children cannot study religious and moral values in school, or, if they do, they suffer the loss of tax funds for their education in secular subjects.

Albania
Bulgaria
Ceylon
China
Cuba
East Germany
Hungary
Republic of South Africa
Russia
Turkey
UNITED STATES
Yugoslavia

S. 2673 corrects that inequity and makes that freedom real for all.

Tuition Tax Credits - No Threat to Public Schools

"The sky is falling! The sky is falling!" So screamed Chicken Little in the familiar children's fable which does so much to teach children the folly of misplaced hysteria. I am reminded of the fable when I read some of the comments of those who oppose a tuition tax credit bill.

For example, in a 1980 column entitled, "Life or Death for Public Education - The Menance of Tuition Tax Credits," Albert Shanker, President of the American Federation of Teachers (AFT) argues that "the effect (of tuition tax credits) would be the destruction of public education as it has existed in this country for over 200 years."

Besides being hysterical far beyond even extravagant exaggeration, the statement is historically inacurrate: 200 years ago, there were no public schools. All education at that time was under private auspices.

As this proposed legislation makes its way through Congress, we will likely be bombarded with an increased volume of such hyperbole, the primary purpose of which is to divert attention away from the main issues at hand, namely, parental rights and social justice.

It is unfortunate that the discussion of the merits of tuition tax credits too often degenerates into a public vs private education debate. I reject such a false dichotomy. I assert rather that the financial health of each system is largely independent of the other.

I agree with the statement of Senator Moynihan on September 24, 1981, when he introduced his bill. "...I do not believe that a tuition tax credit will harm them (public schools) or in any way diminish their ability to provide high quality education to the vast majority of American youngsters. The real danger in my view, to the traditional American school system, is that the non-government schools will disappear as an available option to families of average incomes." Therefore, tuition tax credits should not be seen as a threat to public schools; not one dollar less will be spent on public education as a result. Nor are they subsidies to encourage parents to remove children from public schools which now enroll 90 percent of the students; the credits will be too limited for that.

Those who advance this position raise a curious argument. What they seem to be saying is that the public schools are so bad that for just a small incentive, parents would abandon them.

Three points here: First, such an exodus is unlikely; the majority of parents are satisfied with the public schools. Certainly a small tuition tax credit would not be enticing. Secondly, there is no room in existing private schools for large scale expansion. Probably, private school capacity is barely sufficient to accommodate what had been its maximum share of school enrollment--13% in 1966, a rate at which, by the way, no one argued that they were a threat to public schools. Third, the current system of government grants and loans which apply equally to students attending public or nonpublic colleges has caused no shift to private colleges. Therefore, it is reasonable to assume that a tuition tax credit will not alter enrollments at the elementary and secondary level.

There are at least two current situations which give us a hint about the possible impact of a tuition tax credit.

The state of Minnesota has had a tuition tax credit and/or tax deduction program for the last ten years. A careful review of the enrollment pattern in the state over that period indicates that there has been no significant change in enrollment patterns.

In addition, Louisiana has had an educational tax credit for several years, again with no reported adverse effects on public schools. While a sample size of two is not conclusive, I submit it is more instructive than the hysterical ranting about the destruction of the public school system.

Finally, it is claimed that private schools will attract the best students. This is not supported factually; a 1971 study in Chicago found that I.Q. scores were higher in Chicago public schools than in the Chicago parochial schools. Further, in the Washington, D. C. Catholic schools, test scores of entering students indicate that as a group they are of average ability.

In fact, tuition credits will strengthen the public sector by encouraging pluralism and consumerism in education. Public education is threatened more by a lack of competition and accountability than by private education which acts as a stimulus to achievement in both sectors.

Ideally, public and private schools should be seen as partners, not adversaries in education. Those who construct false dichotomies to indicate otherwise do a great disservice to all education and to the families whose children we serve.

Tuition Tax Credits: Not Unconstitutional; No Church-State Issue

There has never yet been a Supreme Court test of this kind of bill. What's more, there is ample evidence that this bill does not violate the intent of the Founding Fathers.

One often hears that this country was founded on public education, but that is not true. There were no tax-supported public schools in the United States until after 1820. Before that, most grade schools and high schools were church run, even though they were open to anyone who wanted to go. Local governments levied all kinds of taxes--on liquor, on gambling--and gave money to the churches to operate these schools. That was direct support. Obviously, the Founding Fathers would not have considered tuition tax credits unconstitutional. In addition, during past, extensive Senate and House hearings, constitutional experts testified that a broadly-based program of federal tuition credits would withstand any Court challenge. Since credits, aid parents, not religious institutions, the church-state issue is completely avoided. The issue is simply one of parent and student benefit through reduction in the parent's tax liability. It is no more a constitutional issue than a deduction for a church contribution for a stained glass window.

In any event, Congress should pass the bill and let the Courts wrestle with the sometimes competing claims of the Establishment and Free Exercise clauses of the First Amendment. However I must admit some scepticism with the notion, as we stand on the threshhold of the 21st Century, that American freedom is threatened by religious establishment. How long must we live with 18th Century ghosts?

S. 2673 Prohibits Racial Discrimination

Tuition tax credits will not encourage racist schools since they will not be available to families which patronize schools which are not in compliance with existing civil rights laws and regulations and additional provisions of this bill. Instead, they will have the opposite effect by making it possible for low income families, black and white, to enjoy the freedom of educational choice. Professor Nathan Glazer of Harvard has predicted that the group which would benefit most from tuition tax credits will be inner city minority families. And they seem to be aware of this. A New York Times/CBS News survey in 1981 (NY Times 9/28/81) found that blacks support tuition tax credits by a margin of 2-1.

S.2673 Is Not Expensive

Even if funded at the maximum proposal, $500, tuition tax credits for elementary and secondary students will result in parents keeping approximately $2 billion for tuition purposes. This pales in comparison to either the annual federal budget, nearly $800 billion; or the amount saved the taxpayer annually because private schools exist, at least $15 billion.

Tuition Tax Credtis: Are They a Subsidy of the Wealthy?

Tuition tax credits, like free public education, are no "ripoff" for the wealthy and in fact will greatly benefit low and middle income families. In December 1980, the U. S. Department of Education published data which indicates 27% of private school parents earn less than $15,000 a year

(30% is national average) and 80% earned less than $30,000 a year--hardly what one would call wealthy.

Further, a 1979 study of 20,000 students in 81 Catholic schools in eight cities across the country indicates that 77% of the families reported incomes of less than $15,000 with 50% below $10,000! More than one-half of the students in these schools were black and a similar percentage, non-Catholic.

Tuition Tax Credit: Establishment Opposition

The battle over tuition tax credits will be fought mostly in the political arena, since the key issue at bottom is power and control over the educational dollar. The muscle arrayed against tuition tax credits is considerable: NEA, AFT, AASA, NSBA, etc. That the leadership, at least of NEA and AFT, perceive tuition tax credits as a threat is quite natural. They should be opposed because the responsibility of union leaders is to protect the interest of the union members against all perceived threats, however remote and whether real or imagined.

The hard truth, of course, is that education has increasingly come under control of influences which are more adept at lobbying than teaching.

When these leaders become just one more special interest group whose priority is protecting their vested interests even at the expense of the people they serve, then we must view with suspicion their misgivings over tuition tax credits. When they call a tuition tax credit a "life or death issue" as does the AFT, one must wonder if they mean for the country or for the AFT.

Conclusion

Ultimately, economic, political and educational arguments are of secondary importance. This is a justice issue, a human rights issue, a parental choice issue. While we rightly promote the rights of individuals in jobs, health, housing, etc., we have yet to find a way to protect one of the most basic rights of all--the right of families to educate their children according to their conscience and to choose the religious, cultural, and philosophical values for their children's education. The tuition tax credit provides an acceptable answer by providing a rightful share of their tax dollar to parents who choose other than government schools for their children. What could be more in keeping with the essential values and processes of our country? What could be more American?

Certainly, after spending more than $100 billion annually on public schools, after nonpublic school parents save taxpayers $15 billion annually; it is only right and just that America allow these parents to keep a small part of their earnings to educate their children in the way they deem appropriate. In short, a tuition tax credit is good economic policy, good public policy and good educational policy.

As one of our inner city parents said to me recently, "I can give my children nothing more valuable than a good education." S. 2673 brings that hope closer to reality.

STATEMENT
OF
MRS. JEWEL R. MAZIQUE
TO
THE SENATE FINANCE COMMITTEE
RE: SENATE BILL S-2673 - TUITION TAX CREDITS
JULY 30, 1982

Mr. Chairman, and Members of the Senate Finance Committee.

My name is Jewel R. Mazique and I have been a long-time resident of the District of Columbia. Thank you for this opportunity to express again to the Congress my views on education and my support today for S-2673, a bill to provide Federal income tax credit for tuition. I wish to develop several points of grave concern to this nation and to an increasing proportion of the electorate - issues that are constraining factors in the promotion of "quality education" nationally for black and white youth and rooted in historic segregation and discrimination, to wit:

* The integration of public schools without education - distribution of the tools of knowledge, academic motivation and character-building;

* That such programs as transportation and community school accommodation or nutrition and sex education and the like, when deemed relevant, are secondary to basic objectives cited above;

* That Afro-Americans like all other parents wish the fundamentals of public education first and after that other accommodations or programs;

- That the flight from the urban public schools to the parochial (or secular) schools and to suburbia is more and more attributable to the conditions in the schools of the city and the declining quality of education rather than whether a black child is seated beside a white child;

- Alternatives to failing public schools are the emerging private separatist schools;

- That such emergencies have brought parents, communities and the people's organizations to the government [to stem the tide of national disaster] for financial assistance to meet the emergency nationwide.

More than twenty years ago I was invited to serve as a consultant to the League for Universal Justice and Goodwill - an organization of largely black Baptist ministers of the District dedicated to the above mentioned principles of traditional education in the face of changes and challenges then being introduced by the integration of public schools nationally.** Because there was a growing concern on the part of parents, the community and the churches, complaints and appeals for help in the District soon reached the Congress. In the cross-current of confusion developed locally between school administrators and their bureaucratic supporters on the one hand and on the other the assumption on the part of parents that they are the best judges of what type of institution could provide the best education for their children, there came to be a formal attempt to look into the problem and analyze it.

** I am not representing the League today largely because I am not acquainted with the organization's position on the measure - tax credits - under consideration before this Committee.

There followed more than five years of "peacefully assembling" parents and their children in their churches, the "drawing up of grievances" and finally a "petitioning of Congress" to hear the complaints and take the proper action. After both the House and Senate had heard our annual complaints that District schools were failing the public's children, causing increased poverty and youth crime, the House Committee on Education and Labor appropriated $100,000.00 to hear our complaints with suggested alternatives as integration proceeded and ideals of democracy were being fulfilled for the greater good of all the people and this Nation.**

A thorough re-reading of these hearings and the complaints by the parents in search of alternatives to the developing betrayals to public schools will reveal the following :

* That Afro-American pupils were being integrated satisfactorily by de jure into the public schools but programmed retardation (the track system) by de facto was denying skills, motivation and character-building; making the situation worse for all children of the District from Chevy Chase to Anacostia;

* That there were developing alternatives to meet the crisis through flight to the suburbs and enrollment in parochial city schools, especially Catholic;

* That with or without Home Rule, parents and the District's organizations and communities unable to cope with the coming collapse of public schools and the rise in youth crime were turning to the government.

** See Hearings of House and Senate -Subcommittees on Appropriations 1961-1966 and especially the INVESTIGATION OF THE SCHOOLS AND POVERTY IN THE DISTRICT OF COLUMBIA BY THE COMMITTEE ON EDUCATION AND LABOR, Oct. 1965 to Jan.1966 including a report on Lorton Youth and the relation to the public school issue.

These are times that command serious attention to the trends, development and future challenges to the preservation of traditional public education and the raising up of a generation of talented and responsible youth drawn from all sectors of this nation without regard to race, creed or ['previous conditions of servitude']. Though the public schools have developed and grown increasingly popular and powerful, they are now clearly failing at this time of the nation's greatest need. Further the failure of the public schools to humanize and socialize our young in the last 20 years is beginning to have its impact upon families and the dissolution of communities with or without integration; this to the point that people are locating and relocating to escape "what's happening now" to themselves, their children and their children's children. Who dares to deny that the Nation itself is beginning to sag under the weight of crime and poverty and, family breakdown and political anarchy.

A strong argument against tuition tax credits is that the children of low income families, especially Black and Hispanic, or other children from families with no earned income, would not be included in the proposed measure. While proponents readily acknowledge that tuition tax credits would not apply in cases where parents or guardians do not pay taxes directly, such a proposal should be considered but one alternative in the current emergency created by the failure of public schools to educate the public's children. Already the situation is of such grave consequence to the Nation generally that reports of the media seem to be suggesting a need for an alternative to national disaster especially in view of increasing drop-outs, an unique world rise of illiteracy in the U.S. and spreading crime to the point that jails cannot be constructed sufficiently fast to contain the increasing prison population.

Obviously, non-tax-payers could not be included in a tuition tax measure. This is no reason, however, to preclude an authorization of the present proposed measure. Hence, another alternative - not a tax measure - would have to be advanced for those demanding and deserving parents not covered by tuition tax credits. An example of such action is medical aid (Medicare) to the aged and Medicaid for the low income not so aged. Permit me here to interject a sentiment on behalf of the underclass - those whose earned income is so low or those who are recipients of government largesse - some having worked overtime and in the production of this Nation's wealth for low pay, some having been ripped off because they were helpless, others denied education themselves, etc, etc. Often deserving parents turn to community run parochial schools for help without funds to pay their children's way.**

**For an example of enrollment and achievement in such a situation see the attached St. Anthony School record presented to Subcommittee on D.C. Appropriations, in 1966 - p.947 to 951 - presented by Rev. Cleveland B. Sparrow and Mr. John M. Thornton.

When Rev. Cleveland Sparrow, a Baptist Minister of D.C. and Mr. John M. Thornton, a now deceased labor leader, presented, findings to the Subcommittee in 1966 on appropriations of the District citing St. Anthony's parochial school, we parents, drawn from a cross-section of professional homes, government workers, "underclass and welfare recipients", were all very satisfied with the standard set and maintained for Black and White alike, both rich and poor, the educated and not so educated. We are even more proud today of the continued record set by St. Anthony's and reports of its graduates - youth leaders with exemplary social records and employment; without which they would have been doomed to failure in the public schools. [See attached testimonials of Rev. Sparrow and Mr. John M. Thornton.]

If as the press reminds daily and the public cannot forget the public schools have failed, if not betrayed the cause for which they were founded, the logical alternative to complete disaster is the development of schools [largely religious] with government support. Hence, the challenge to the limited supplementary aid of tuition tax credits would be to design and implement an additional law that would cover those who have no income or such a significantly low income as to warrant assistance as provided by Medicaid and Food Stamp programs for maintaining health standards.

While these alternatives to public schools may not cover all the formal material demands such as transportation and cafeterias, they are moving toward fulfilling the hopes for Human Rights while progressively closing the gap between Black and White, rich and poor, the educated and the under-educated. Least of all a proposed measure should not be defeated solely because its controversial nature commands enforcement. Should respect for the law be waived or a measure rejected because it requires enforcement, we would never pass any legislation and the government "of the people, for the people and by the people" would soon pass away, or become totally ineffective. In the words of the late Secretary of State, John Foster Dulles: "The test of any measure is not what it says but what it does."

Racial Discrimination and Integration

A prime issue and immediate shock to Afro-Americans, as legalized segregation with discrimination was being phased out, was the unfolding of tactical maneuvers which discriminated more effectively. The net effect has been and continues to be a progressive deterioration of "quality education" not incident to the race of the student body, but because as integration came in through the front door the skills (reading, writing and arithmetic) were quietly programmed out the back while academic motivation was being dealt a death blow and character-building values altered. Morever, in the name of civil rights and under one roof and sometimes in the same classroom, black pupil were discriminated against *de facto* through the self-fulfilling prophecies imposed to wit; that black pupils were so culturally deprived so economically disadvantaged and such victims of developmental disabilities that they could not be expected to master the fundamentals of education.

There were numberless complaints of parents against the notoriously discriminating "track system" of the District in the early 1960's It was our judgment that the "track system" dubbed "programmed retardation" undermined quality education in spite of integration and contributed to the flight of white and black communities to suburbia. Among Afro-Americans, Hispanics and others who remained in the city their children were transfered to private schools, largely Catholic, more for educational reasons than because of the issue of race. For instance, there was provided a model school down in old Southwest Washington (Amidon) where the student body was largely drawn from the underclass and welfare residents which reintroduced the traditional curriculum. Soon black and white parents from Chevy Chase to Georgetown to Anacostia rushed to enroll their children there to experience public school education without frills, fads and frolicking so popular in other public schools at that time. It soon became clear that integration of the races was possibly becoming secondary, "Quality Education". In spite of reports of the superintendent of schools and the teachers, of great progress in that public school, Amidon was subsequently abandoned as a model of traditional education and demonstrated human rights.

Further details on the development and analysis of parent complaint against the public schools would be beyond the scope and limitations of this hearing on tax-credits to parents whose children are enrolled in private schools. But it should be added here that the League for Universal Justice and Goodwill undertook the study of parent dissatisfaction with public schools here in D.C. in late 1960 and early 1961, continuing throughout the sixties, a right granted by the Constitution (1) to peacefully assembly complainants, (2) hearing their just grievances, and (3) to petition the Congress for a Hearing to consider actions that might avert the collapse of public education.**

Significantly, since 1965 the flight from public schools in search of quality education has witnessed a drastic drop of more than a third of the school population from 150,000 to less than 100,000 to maybe about 90,000 today. Although birth control has contributed somewhat to the decline much of the decrease must be attributed to public school failure to educate, to motivate to develop character. Thus, the local Catholic schools are sagging under the weight of both their own parish children and the Baptists, Methodists and other Protestant children and even some not of Christian faith. In the meantime, large and small Protestant churches are expanding their religious mission to

**See INVESTIGATION OF THE SCHOOLS AND POVERTY IN THE DISTRICT OF COLUMBIA. Hearings before the Task Force on Antipoverty in the District of Columbia. The Committee on Education & Labor, House of Representatives. Oct.7,1965-Jan.13,1966 - petition to the Congress, p. 255 to 305.

include day schools for the children neglected or academically handicapped by public schools. To my knowledge there are four such community schools which have sprung up in my community in the last five or ten years.

The Emerging Private Separatist Schools

In a hearing before this Committee regarding the issue of "SEPARATION OF CHURCH AND STATE" and the support of church schools by the early government of this nation in the 18th and early 19th centuries, a respondent volunteered it was because there was no public education system primary or elementary at the time to meet the need of youth development . It might be noted here that trends and development in the last quarter of a century strongly suggest that this nation is now moving back towards that condition in spite of a building boom of schools, expanded faculties and the appropriations of great sums of Federal funds. Significantly, we complained in the sixties that as public funds increased for public schools, education and the youth development was failing proportionately; this to the point that jails of the future could not be constructed sufficiently fast to incarcerate the drop-outs, the school produced illiterates, the unskilled and the uneducated and unemployed. Where a difference is observed it is a result often of parents who sought out and provided an alternative to public schools.**

** See Report by Alfred E. Simons and Nelson S. Burke, "A Measure of the Education Achievement of a Group of Incarcerated Cuturally Disadvantaged & Educationally Deprived Dropouts" Ibid pp.713-746

An immediate issue of grave concern to the Nation and to parents (and even to grandparents) is not the "integration of education" but the disintegration and collapse of the public schools system confronting black and white people alike in America. In striking contrast, most private schools are struggling to preserve traditional standards and save our children.

Significantly, the rapidly emerging number of private Christian schools (black and white) suggests popular dissatisfaction with public schools. Often these private schools employ former public schools teachers, who have become disillusioned with the decline of a bureaucratized public school system. Opponents may argue that these new schools represent a resegregation of education in America. Proponents may argue that their schools are not segregated but separatist. They point out that it requires remembering that racial segragation is the forced separation of the races that is legally sanctioned . Alternately, it is observed that the emerging private church schools have made a conscious choice themselves to be separate from what they consider to be educational and cultural disintegration of the public school system.

What is to be done?

What we are seeing, following vast sums appropriated for public schools, is the death of alternatives. What then is to be done? Beyond the acknowledged right of all children, under-class as well as middle class, to have equal access to the fundamental tools of knowledge (reading, writing and arithmetic), academic motivation, and character-building, the national interest demands the rehabilitation of those neglected by public schools and support for programs to prevent further educational handicaps to those outside private schools.

In the evolving age of science and technology, specialized knowledge, technical expertise, social engineering are replacing material capital and resources as the determinants of the progress, development, and survival of governments and people. Any government which fails to grapple with the challenge of this age will fall behind those who place their greatest priority on their young people. I was personally alerted to the increasing role of education over material worth while attending a Hearings conducted by the Senate Foreign Relations Committee in 1968. In a dialogue between Senator Claiborne Pell and Harvard Professor Louis Hartz, the issue of the emerging Managerial Estate and the significance of knowledge and political power were formally unveiled.

Therefore, I wish to leave with this committee my theory that tuition tax credits are an economic necessity for the continuation of a system of quality education open to all children from all walks of life whose parents are becoming progressively concerned and hopeless. Because jails and other institutions for the disturbed and neglected are overflowing, and, most tragically, because this nation will suffer proportionately a decline in knowledgeable and skilled youth with the possibility of social decay, the need for tuition tax credits is mandatory.

As a former consultant to the League for Universal Justice and Goodwill and a member of several other black organizations disturbed over the trends, developments, and future challenges that have followed in the wake of integration, I have walked the halls o Congress for over a quarter of a century. I have added my voice to the complaints of my fellow members to the White House and before the House our organizations engaged the attention of Senators and Representatives as we predicted as early as twenty-five years ago, that:

1. if the public schools continued to substitute fads, frolicking, and fun and even sheer politics for "quality education" the jails would not be able to hold their graduates;

2. parents in increasing numbers would turn to private schools in search for the tools of knowledge, academic motivation, and character-building; and that whites, too, would become conscious of the neglect of their children's education and would themselves join the search; and

3. as pupils were increasingly reported as economically disadvantaged, mentally retarded, and culturally deprived by psychologists and counselors, administrators and teachers, black parents (Protestant and Catholic) would breakdown the doors of parochial schools seeking access to "quality education" lest concerned about the racial designation of peers than about salvation and survival in the evolving age of science and technology.

To the challenge of growing illiteracy in America, policymakers and planners are required to design and implement policies and programs that will provide "quality education" to all of our youth regardless of social, racial, or economic background. The tuition tax credit legislation can begin to meet this challenge now.

It appears that both the Congress and the Administration have the task of hastily fashioning an alternative to anarchy and to a total breakdown, because public education has failed and only vandalized buildings and intimidated faculties remain, [the latter under constant attack and calling for protection]. Neither individual parents, nor separate communities, not urban ghettos, nor suburban enclaves can in isolation meet this national crisis. Moreover, in view of the collapse of education, it would take a generation or more to rehabilitate educationally a people, a society, or a nation.

WITNESS

REV. CLEVELAND B. SPARROW, LEAGUE FOR UNIVERSAL JUSTICE AND GOOD WILL

Mr. NATCHER. Our next witness tonight is Rev. Cleveland B. Sparrow. Come around. You are?

Mr. SPARROW. Reverend Sparrow.

Mr. NATCHER. Mr. Sparrow, we will be pleased to hear from you at this time.

Mr. SPARROW. Mr. Chairman and members of the committee, the League for Universal Justice and Good Will is happy to appear before you again to express our continuing interest in quality education for the public's children of the District. Some 5 years ago our organization testified before this committee complaining of the inequality of the "tract system" when the late Hon. Louis C. Rabaut was chairman. We well appreciate his demonstrated interest in the complaints put by us to him of the school's failure to give our children the correct tools of knowledge and to promote within them a burning desire for academic advancement and moral development. We are deeply indebted to you Mr. Natcher and the other members of this committee for continuing in the spirit of the late chairman.

We have with us, Mr. Chairman and members, a copy of a statement prepared by our organization. It was signed and submitted on behalf of some 125 leaders of churches and organizations. The House Committee on Education and Labor was petitioned to look into the program of our schools, the academic performance of its pupils and the disposition of funds appropriated. To our knowledge the findings and recommendations of the subcommittee investigating the local schools and poverty have not been publicized.

However, the published testimonies including the petition initiating same are available. Therefore we respectfully request that you give consideration to incorporating this petition including the summary and recommendations thereto in our statement for today. It appears on pages 261 to 266 of the published hearing instead of at the beginning which is logically proper.

(The statement of the National Capital Voters Association follows:)

TESTIMONY ON THE DISTRICT OF COLUMBIA SCHOOL BUDGET BY JOHN M. THORNTON FOR THE NATIONAL CAPITAL VOTERS ASSOCIATION

Mr. Chairman and members of the committee, I am John M. Thornton of the National Capital Voters Association. Our organization has long taken the view that the public schools of the District were approaching the point of diminishing returns—that the more money that is poured into them, the less education is dispensed and, thus, the less prepared academically and morally our children are becoming. We are happy to have the opportunity again to stress this point of view and to warn anew that money and more money is not the answer to the collapsing District school system. This sad situation would not obtain and could not exist, if the policy of "programed retardation" were abandoned, countless frills discarded and fringe activities minimized for dedication to the dispensing of the tools of knowledge without regard to class, culture or economic conditions of servitude.

We note with grave alarm the steadily declining performance of our local schools in the last decade toward the point of imminent collapse while during that same period the per pupil cost has risen from $340 to $704.50 or more than 100 percent with increasing demands that it rise to 300 percent as the price of teaching a child "reading, riting, and rithmetic." The question which immediately comes to many of our minds as we survey the outlandish demands being made upon the taxpayer for additional funds to do more of the same thing is whether there is not a planned scheme to make education so expensive that a move will be gotten under way to relocate the Negro population outside the city. We can see no other explanation for so little education at such great expense. There is a growing number of us who are convinced that what our children are getting in the public schools, really amounting to little more than a "holding service" does a disservice to our children and is moving toward bankrupting society.

Consequently, the committee on education of our organization has chosen as their project for this year a study of parochial school education in several sample communities where we are contrasting the net performance, academically and morally, of Catholic educated children with that of public school pupils drawn from similar or identical home and community environment but with extremely limited funds and equipment in the parochial schools compared to unlimited and annually spiralling fund appropriations for "service," "aids," "help," "tests," "counseling," "recreation" etc. plus armies of volunteers, advisers and "aids." We respectfully request your serious consideration and inclusion in this record of our findings in a working class neighborhood.

We have chosen for presentation a Catholic parish elementary school with approximately an equal number of Negro and white pupils drawn from a few professional families residing there to a larger number drawn from "welfare" homes, orphanages and one-parent families. For the school's total enrollment of 600 there are 15 full-time teachers, 4 part-time instructors, 1 administrator (a principal), and 1 secretary. There are no "testers" and counselors, or psychologists to downgrade and attack the personal dignity of these children. There is demonstrated genuine love and concern for every child including those written off as hopelessly "culturally deprived" by the public schools and transferred there. There is no cafeteria thus neither hot breakfast nor hot lunches but there is, nevertheless, an application to study on the part of the children and the tools of knowledge daily dispensed.

Although the current graduating class of eighth graders is smaller now, for the most part the average has been in the forties per teacher. Significantly, this class of 1965 all passed creditably the competitive entrance examination for high schools (Catholic) and will be admitted with two of their number qualifying for scholarships. Just imagine in the District of Columbia after hearing all the complaints of what cannot be done toward the education of youth from a diversity of background, an entire graduating class of Negro and white children equally distributed, drawn from homes that range from professional to "welfare" all rating "outstanding" on the basis of academic achievement and moral development. It proves that where there is a will to teach children, they learn. Moreover, there is no library in this elementary school.

Incidentally beginning at the first-grade level, the very first day of school, every child is supplied with textbooks which he must transport daily to and from school for use in the preparation of regular assignments. The standard homework requirement expected for the first three grades is a minimum of 25 minutes daily; for the fourth and fifth and sixth grades a minimum of 45 minutes' homework per night and 1 hour to 1½ hours daily for the seventh and eighth graders. All homework and desk work at school is turned in to the teachers who grade it and send it home to be cosigned by parents.

Need our organization remind that the impact of these well-trained and academically instructed pupils of this parochial school is appreciated by all the residents of that community in strong contrast to the behavior observed of public school pupils of similar background and community environment with the exception that the latter are the beneficiaries of more than 118 special "helps," "aids," new buildings, adequate playgrounds etc. amounting to more than 25 percent of the total District budget.

Now in contrast I wish to note the difference between the results observed and reported of parochial school pupils drawn from similar struggling homes, exposed to the same community problems and that of conduct and performance observed of the elementary and junior high school pupils, especially, enrolled in the public schools living in the same neighborhood. The pupils from primary through junior high are rarely observed traveling to and fro with more than their lunch buckets and occasionaly a notebook. Contacts with them personally convinces us they are not mastering the basic fundamentals of knowledge: that is, a distressing number cannot read, write, spell or work arithmetic problems. It can clearly be seen that they are far below the standard achievement for pupils of their age and the older they become the "behinder" they get. Countless numbers of them, in contrast to the parochial children of the neighborhood, early develop a dislike for book learning and a hostility for school. With the approaching warm weather it is common to note gangs of boys even of elementary age "cutting" school and just wandering aimlessly through the streets. These hostile, unreached, untaught youth become the dropouts, delinquents and juvenile criminals to be supported or incarcerated for the balance of their lives by the taxpayer.

The question logicaly arises of what to do about this steadily deteiorating school situation—a system of academically diminishing returns, this public school rathole receiving and demanding more and more money and returning less and less in the net development of our children. Here again we turn to the parochial schools for an examination of what they are doing.

We are told that they are currently engaged in a citywide do-it-yourself study and evaluation of their system of education. Unlike us they are not bringing in a high-powered educator foreign to the aspirations, needs, problems, etc., of the community and city but are involving parents in meetings officially called that their concerns may be registered to the principal and teachers, who, in turn, will transmit the findings to the office of Catholic Education to be refined and worked into the existing academic structure. It should be noted here that greater and greater emphasis is being placed on the special training necessary to qualify as a principal and vital to the process of evaluating the system and interpreting the interest of parents.

In conclusion our organization has instructed me to go on record today opposing the importation of a foreign evaluator—foreign to our aspirations, needs and interests—to make a study of what ails our children. A cursory examination of some of the selected investigator's writings (Mr. Harry Passow of New York) suggests that his publication record leans heavily toward the education of the elite, the so-called gifted but in fact advantaged at the expense of the majority. Why pay or appropriate some $200,000 for an imported evaluator when we, the parents and native residents, are standing by, qualified and willing to assist and we do not charge anything for our service.

Finally may we state that we are convinced that the countless frills and endless fringe activities are not only academically unrewarding but frustrate dedicated teachers in their efforts to teach, contribute to many of the qualified retiring prematurely or to quit the system and, for the purposes of this Committee on Appropriations wrestling with a fair allocation of a limited congressional total allotted, these frills and activiites are too expensive to be enlarged or even maintained in some cases. We would suggest that the expanding "testing" and counseling service be curtailed until at least the pupils are taught something to be tested on and counseled to do. We might suggest as we are informed the New York system has ordered: a return of "testers" counselors and specialists of various sort to the classroom as teachers until the gap between services and teaching can be closed.

I cannot close my remarks without emphasizing the need for this committee to make an annual auditing of school books and a thorough study of the disposition or allocation of funds that any duplications or leakage may be located and the savings applied to programs of direct education—books, teachers of subject matter, school buildings—before additional funds are considered by this committee.

NATIONAL TAXPAYERS UNION

A NONPARTISAN, NONPROFIT ORGANIZATION DEDICATED TO THE PUBLIC INTEREST

325 PENNSYLVANIA AVENUE, SOUTHEAST WASHINGTON, DISTRICT OF COLUMBIA 20003 TELEPHONE AREA CODE (202) 543-1300

James D. Davidson
Chairman

George E. Snyder
President

July 30, 1982

Senator Robert Dole
Chairman
Senate Finance Committee
2227 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing in support of the tuition tax credit concept on behalf of the 450,000 family members of the National Taxpayers Union (NTU). The National Taxpayers Union supports tuition tax credits for three primary reasons. Tuition tax credits will: 1) "Untax" educational free choice; 2) encourage cost efficiency, and; 3) improve the overall quality of education in America.

The academic decline of our government-operated school system has been well-documented. Our system in which schools are supported regardless of their quality accounts in part for this decline.

Despite widespread disillusionment with public schools, many American parents are compelled by limited finances to accept low-quality education for their children. The freedom to chose between alternative educational environments has been cut off for those parents who cannot afford to pay twice for their children's education. Such a forced selection cannot benefit parents, children, or society.

However, more and more parents are choosing to make the sacrifices necessary to send their children to private schools. In fact, while public school enrollment declined by 7.5 percent from 1976 to 1980, private school enrollment declined only 2.7 percent. It is also significant that 41 percent of private school students come from families earning less than $20,000 a year. Over 24 percent come from families earning less than $10,000 a year.

Tuition tax credits are the fairest way to extend free choice to the most individuals. Tuition tax credits will "untax" educational free choice. The idea is not to dictate to families or to favor some schools over others, but simply to allow all families to be financially able to choose the education they want for their children. By giving parents control over a greater portion of their economic power, tuition tax credits will allow them to make decisions based on the quality of the school and the needs of their children.

— THE AMERICAN TAXPAYER ACTS THROUGH NTU —

It is our belief that private decisions about education are better than governmental, bureaucratic decisions. School administrators now have a monopoly power over those who cannot afford to pay simultaneously for public and private education. The educational freedom created by tuition tax credits raises issues of choice and power. Public school officials, anxious to protect their "territory" are unwilling to allow parents to freely choose where to educate their children.

We must recognize that the public school establishment has a vested interest in seeing tuition tax credits defeated. Tuition tax credits will force this huge, inefficient, ineffective bureaucracy -- whose expenditures continually increase while test scores continually decrease -- to account for itself.

Public schools now spend an average of $2,500 per student, while private schools -- including expensive prep schools -- spend on the average of only $900 per student.

Currently, private schools save the government an estimated $17 billion by educating students who would otherwise attend public schools. Because private schools nearly always cost less than public schools, the government stands to save many more billions if a greater portion of students shift to private education.

For example, it costs the District of Columbia $3,600 to educate one pupil. Of this sum, $1,200 is used to defray fixed costs such as administration and maintenance. If we deduct an additional $500 -- the maximum allowed by S. 2673 by 1985 -- the school is still left with $1,900, with no expense of educating an additional child.

In analyzing the educational tax credit legislation proposed in the District of Columbia last fall, economics Professor E.G. West of Carleton University concluded that such legislation would benefit "all consumers of education." Professor West found that the District would save a net $28.4 million, while the federal government would save an equivalent amount. West based his figures on the combined effects of decreased costs and lost revenue to the D.C. school system and a Newsweek poll estimate that 23% of public school parents would take advantage of the tax credits.

If tuition tax credits were instituted nationwide, similar savings could be expected.

In addition to expanding freedom of choice for parents and encouraging cost efficiency, tuition tax credits will stimulate public and private schools, resulting in better quality education in both sectors. Public schools, which have lacked accountability due to their subsidized status, will be stimulated to improve their programs in order to attract students and quality teachers. Public schools will be forced to prove their effectiveness in an open environment where they are measured against their competitors. Creativity and innovation will be encouraged as both public and private schools strive to meet the needs of the community.

Tuition tax credits have been opposed by some as a tax break for the rich. The wealthy, however, are able to afford quality schools even when they must, in effect, pay twice for their childrens' education. As noted above, 41 percent of private school students come from families earning less than $20,000 a year. Tuition tax credits will aid a large proportion of low and middle-income families. By rescinding the tax on free choice, options which have formerly been only for the wealthy, or have been a burden for others, are opened to many. If Congress finds it desirable, an income ceiling could be established above which one cannot receive tax credit for tuition expenses.

Some charge that tuition tax credits will promote racial discrimination by allowing parents to place their children in private schools which contain few minority students, creating de facto segregation. However, a major study published recently by the National Center for Education Statistics has found that "segregation of black and white students in U.S. schools is no greater and no less than it would be if there were no private schools."

The same study suggests that the overall lower income of blacks accounts for their underenrollment in private schools. Moreover, minority and lower income families show strong interest in the alternative education private schools offer, the study states. We believe that tuition tax credits are the best way to give lower income and minority families a choice in education. That choice is now being impeded by financial considerations.

NTU advocates a provision allowing third parties, both individuals and organizations, who pay tuition expenses for students to take advantage of tuition tax credits. Such a provision would encourage private sponsorship of students from lower-income families, giving them opportunities that do not exist under the current school system. Tuition tax credits under this provision should be limited to $500 per sponsored student.

Opponents also call tuition tax credits a subsidy for private schools. Such a view follows from the belief that an individual's income belongs to the government, and any tax break is a "gift" to the beneficiary -- in this case, private schools. This is a false notion. Tuition tax credits are not subsidies for private schools, but equity for parents of all incomes. Aside from the question of which school gets the parents' money, we should ask, "Which school uses it more effectively?" Clearly, it is private schools.

If we use the public school record as an indicator, the relationship between expenditures and quality of education would seem to be an inverse one. For example, over the last ten years, federal funding for elementary and secondary education has nearly tripled, while average SAT scores for college-bound seniors have dropped significantly. Moreover, increased federal spending has been accompanied by a decline of over 10 percent in public school enrollment. We are spending more money on fewer students who are getting a poorer education.

If parents take their children out of public schools in large numbers, it will indicate that they were not there by choice, but by default, because they could not afford anything else. By allowing parents to direct their educational dollars to the school of their choice, tuition tax credits will put decision-making power over children where it should be -- with parents.

Tuition tax credits will benefit parents by giving them a choice. Children will benefit by an improved education. Society will benefit from increased freedom and a more efficient investment in human potential.

Please make this letter a part of the formal hearing record on the "Educational Opportunity and Equity Act of 1982."

Sincerely,

David Keating
Executive Vice President

DK/pl

STATEMENT OF ALTHEA T. L. SIMMONS,
DIRECTOR, WASHINGTON BUREAU, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, BEFORE THE SENATE FINANCE
COMMITTEE, ON S. 2673, TUITION TAX CREDIT
BILL, FRIDAY, JULY 16, 1982.

I AM ALTHEA T. L. SIMMONS, DIRECTOR OF THE WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A 73-YEAR-OLD NATIONAL CIVIL RIGHTS ORGANIZATION WITH 1800 BRANCHES THROUGHOUT THE COUNTRY. THE NAACP IS TOTALLY OPPOSED TO THE CONCEPT OF TUITION TAX CREDITS IN ANY FORM AND FOR ANY AMOUNT. WE HAVE TAKEN THIS POSITION BECAUSE WE VIEW TUITION TAX CREDITS AS AN UNCONSTITUTIONAL VIOLATION OF THE SEPARATION OF CHURCH AND STATE AND BECAUSE TUITION TAX CREDITS ARE A THREAT TO PUBLIC EDUCATION IN AMERICA.

TUITION TAX CREDITS RAISE TWO IMPORTANT CONSTITUTIONAL ISSUES. FIRST, BECAUSE MOST PRIVATE SCHOOLS ARE ASSOCIATED WITH RELIGIOUS DENOMINATIONS, TUITION TAX CREDITS WOULD INVOLVE THE FEDERAL GOVERNMENT IN THE UNCONSTITUTIONAL SUPPORT OF CHURCH ACTIVITIES. THE SUPREME COURT, IN COMMITTEE FOR PUBLIC EDUCATION v. NYQUIST, 413 U. S. 756(1973), HELD A NEW YORK TUITION TAX CREDIT SCHEME UNCONSTITUTIONAL. I BELIEVE IT WORTHWHILE TO REVIEW THE COURT'S OPINION IN THAT CASE. JUSTICE POWELL, WRITING FOR THE COURT:

> "By reimbursing parents for a portion of their tuition bill, the state seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented schools. And while the other purposes for that aid--to perpetuate a pluralistic educational environment and to protect the fiscal integrity of overburdened public schools--are certainly unexceptionable, the effect of the aid is unmistakeably to provide desired financial support for non-public sectarian institutions."

THE COURT VERY CLEARLY REJECTED THE STATE TUITION TAX CREDIT PLAN AND GAVE NO REASON TO ASSUME THAT A FEDERAL PLAN WOULD NOT RUN AFOUL OF THE SAME CONSTITUTIONAL PROHIBITIONS. IN FACT, THE SAME RATIONALE IS USED BY THE PROPONENTS OF THE FEDERAL TAX CREDIT PLAN--AID TO OVERBURDENED PARENTS, DIVERSITY IN EDUCATION, AND THE FISCAL INTEGRITY OF PUBLIC SCHOOLS--AND IS CITED IN THE PRESIDENT'S LETTER OF TRANSMITTAL ACCOMPANYING THE LEGISLATION AND PRINTED IN THE JUNE 23, 1982 CONGRESSIONAL RECORD ON PAGE S7406. THESE ARGUMENTS WERE SPECIFICALLY REJECTED BY THE COURT IN ITS 1973 DECISION.

THE SECOND CONSTITUTIONAL ISSUE RAISED BY TUITION TAX CREDITS CONCERNS THE SUBSIDIZATION OF ILLEGAL ACTIVITIES, SPECIFICALLY RACIAL DISCRIMINATION. S. 2673 ATTEMPTS TO ENSURE THAT CREDITS WILL NOT BE PROVIDED TO PARENTS SENDING THEIR CHILDREN TO SCHOOLS THAT DISCRIMINATE THROUGH THREE PROVISIONS IN THE BILL:

1. SCHOOLS THAT QUALIFY FOR A 501(c)(3) TAX EXEMPTION MUST SUBMIT A STATEMENT, SUBJECT TO THE PENALTIES FOR PERJURY, TO THE IRS ANNUALLY CERTIFYING THAT THEY HAVE NOT PRACTICED RACIAL DISCRIMINATION.
2. A COPY OF THAT STATEMENT MUST BE PROVIDED TO ALL INDIVIDUALS PAYING TUITION AND MUST ACCOMPANY THE TAXPAYER'S TAX RETURN IN ORDER TO QUALIFY FOR THE TAX CREDIT.
3. IF THE ATTORNEY GENERAL RECEIVES A COMPLAINT THAT THE SCHOOL HAS DISCRIMINATED AGAINST AN INDIVIDUAL, THE ATTORNEY GENERAL WOULD BE AUTHORIZED TO BRING

> A DECLARATORY JUDGEMENT PROCEEDING IN THE DISTRICT COURT. IF HE PREVAILS IN THE SUIT, TAX CREDITS FOR TUITION PAYMENTS TO THE SCHOOL WOULD BE DISALLOWED FOR THREE YEARS.

THERE ARE A NUMBER OF PROBLEMS WITH THESE INTENDED SAFEGUARDS. UNDER THE PROVISIONS OF THE BILL, ONLY THE ATTORNEY GENERAL WOULD BE ABLE TO BRING ACTION FOR THE PURPOSE OF DISALLOWING TAX CREDITS FOR SUMS PAID TO SCHOOLS THAT DISCRIMINATE [Section 44H(d)(6)]. THE BILL EXPLICITLY LIMITS THE TREASURY DEPARTMENT AND IRS TO MINISTERIAL RESPONSIBILITIES. SINCE THE ATTORNEY GENERAL IS AUTHORIZED TO BRING SUIT ONLY IN SPECIFIED CIRCUMSTANCES, THIS PROVISION IS PARTICULARLY SIGNIFICANT. S. 2673 WOULD PERMIT THE ATTORNEY GENERAL TO FILE SUIT ONLY UPON PETITION OF "A PERSON WHO ALLEGES THAT HE HAS BEEN DISCRIMINATED AGAINST" AND ONLY IF THE ATTORNEY GENERAL FINDS "GOOD CAUSE." THEREFORE, EVEN IF THE IRS HAS DENIED AN APPLICATION FOR TAX EXEMPTION OR HAS BEGUN ADMINISTRATIVE PROCEEDINGS TO REVOKE AN EXEMPTION BECAUSE OF RACIAL DISCRIMINATION, THE IRS WOULD BE UNABLE TO REFER THE MATTER TO THE ATTORNEY GENERAL FOR THE FILING OF A DECLARATORY JUDGEMENT LAWSUIT. THE GENERAL PROHIBITION AGAINST THIRD-PARTY COMPLAINTS EXTENDS, IN THIS BILL, EVEN TO OTHER AGENCIES OF THE FEDERAL GOVERNMENT.

IN ADDITION, THE LEGISLATION WOULD LIMIT THE CLASS OF INDIVIDUALS WHO MAY PETITION THE ATTORNEY GENERAL TO THOSE APPLICANTS WHOSE ADMISSION WAS DENIED, OR TO WHOM SCHOLARSHIP AID WAS DENIED, WITHIN A SIX-MONTH PERIOD PRIOR TO PETITIONING THE ATTORNEY GENERAL, OR A STUDENT WHO SUFFERED AN ALLEGED ACT OF DISCRIMINATION WITHIN THAT SAME SIX-MONTH TIME PERIOD.

ONCE A PETITION IS FILED, THE ATTORNEY GENERAL'S ENFORCEMENT DISCRETION IS UNRESTRICTED. HE "IS AUTHORIZED UPON FINDING GOOD CAUSE" TO FILE SUIT BUT ONLY AFTER NOTIFYING THE SCHOOL OF THE ALLEGATIONS AND PROVIDING AN OPPORTUNITY TO CONVINCE HIM--IN UNSWORN, OUT-OF-COURT MEETINGS AND CORRESPONDENCE--"THAT THE RACIALLY DISCRIMINATORY POLICY ALLEGED IN THE PETITION DOES NOT EXIST OR HAS BEEN ABANDONED." [Section 7408(c)] THUS S. 2673 PROVIDES NO ROLE FOR THE PETITIONER IN THESE NEGOTIATIONS OR ANY SUBSEQUENT LEGAL PROCEEDINGS. FURTHER, THIS OUT-OF-COURT PROCESS MAKES IT VERY UNLIKELY THAT ANY OF THESE CASES WILL EVER GO TO JUDGEMENT. IT IS LIKELY TO BE CONSTRUED AS INTENDED TO SECURE A COMMITMENT TO CHANGE A SCHOOL'S STATED POLICY IN THE FUTURE RATHER THAN SECURING RECOVERY OF AN IMPROPERLY CLAIMED CREDIT IN THE PAST.

WHILE S. 2673 DOES INCORPORATE EXISTING IRS POLICY THAT DISCRIMINATORY SCHOOLS ARE NOT ENTITLED TO A TAX EXEMPTION, THE ADMINISTRATION WILL BE ARGUING BEFORE THE SUPREME COURT THAT THIS POLICY IS NOT AUTHORIZED BY LAW. SHOULD THE ADMINISTRATION PERSUADE THE COURT OF ITS VIEW, THEN UNLESS OR UNTIL NEW LEGISLATION IS ENACTED, THE PROVISION OF S. 2673 LIMITING TAX CREDITS TO TUITION AT SCHOOLS THAT QUALIFY FOR A 501(c)(3) EXEMPTION WILL BE MEANINGLESS. THE ADMINISTRATION'S POSITION ON THIS ISSUE, AS WELL AS ITS RETREAT FROM CIVIL RIGHTS ENFORCEMENT, ALSO RAISES SERIOUS DOUBTS ABOUT WHETHER THE ATTORNEY GENERAL WILL COMMENCE MANY SUITS UNDER THE PROVISIONS OF THIS LEGISLATION.

THE CONCEPT OF REQUIRING A SWORN STATEMENT FROM EACH SCHOOL, UPON PENALTY OF PERJURY, WOULD BE UNWORKABLE AND INEFFECTIVE. S. 2673 MANDATES A SWORN STATEMENT BY THE INSTITUTION THAT IT HAS NOT FOLLOWED A RACIALLY

DISCRIMINATORY POLICY. IF THE INSTITUTION IS THE AFFIANT, THE PERJURY PENALTY WOULD BE LIMITED TO A FINE OF LITTLE DETERRENT VALUE. IF, ON THE OTHER HAND, THE SCHOOL'S BOARD OF DIRECTORS OR ITS REPRESENTATIVE SWEARS THAT THERE IS NO DISCRIMINATORY POLICY, WHO WOULD BE PROSECUTED BECAUSE THE SCHOOL'S STAFF HAS ENGAGED IN DISCRIMINATORY PRACTICES? THESE QUESTIONS DEMONSTRATE THE DIFFICULTY IN RELYING ON THE IMPOSITION OF CRIMINAL SANCTIONS TO PREVENT THE EXPENDITURE OF FEDERAL FUNDS TO BENEFIT DISCRIMINATORY INSTITUTIONS.

WE HAVE ALREADY SEEN HOW INEFFECTIVE A SIMILAR IRS REQUIREMENT HAS BEEN. ANNUAL CERTIFICATIONS OF NON-DISCRIMINATION WITH PERJURY SANCTIONS ARE ALREADY REQUIRED, BUT HAVE HAD NO EFFECT ON SCHOOL'S SEEKING TO MAINTAIN THEIR TAX EXEMPT STATUS DESPITE THEIR RACIALLY DISCRIMINATORY PRACTICES.

EVEN IF A DECLARATORY JUDGEMENT IS OBTAINED, IT WOULD NOT BE EFFECTIVE UNTIL ALL APPEALS WERE EXHAUSTED [Section 44H(d)(4)]. THEN THE IRS WOULD ATTEMPT TO ASSESS AND RECOVER DEFICIENCY JUDGEMENTS FROM TAXPAYERS WHO CLAIMED THE CREDIT BEFORE THE DECLARATORY JUDGEMENT WAS INSTITUTED AND RESOLVED. GIVEN THE IRS' RECORD OF IDENTIFYING AND RECOVERING UNREPORTED INCOME, WE LACK CONFIDENCE IN THE EFFECTIVENESS OF THIS PART OF THE CIVIL RIGHTS ENFORCEMENT MECHANISM AS WELL.

IT IS THE VIEW OF THE NAACP THAT THE ANTIDISCRIMINATION PROVISIONS OF S. 2673 WOULD NOT BE EFFECTIVE IN PREVENTING THE TAX RELIEF PROVIDED THROUGH THIS TUITION TAX CREDIT PLAN FROM PROMOTING RACIAL DISCRIMINATION.

IN THIS SAME VEIN, WE OBJECT TO SECTION 6 OF S. 2673 WHICH PROVIDES THAT TUITION TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE TO EDUCATIONAL INSTITUTIONS OR THE RECIPIENTS OF THE CREDITS. TAX EXEMPT STATUS IS FEDERAL FINANCIAL ASSISTANCE AND THUS THE VEHICLE THROUGH WHICH OUR

NATION'S CIVIL RIGHTS LAWS APPLY TO 501(c)(3) EDUCATIONAL INSTITUTIONS. CERTAINLY TAX CREDITS WHICH SUBSIDIZE PRIVATE EDUCATION AT SUCH INSTITUTIONS IS FEDERAL FINANCIAL ASSISTANCE AND WE MUST QUESTION WHY SECTION 6 IS EVEN INCLUDED IN THE LEGISLATION, AS WE SEE IT ADVANCING NO NECESSARY PURPOSE.

THE NAACP FOR DECADES HAS BEEN AT THE FOREFRONT OF EFFORTS TO IMPROVE AND PROMOTE QUALITY IN OUR NATION'S PUBLIC SCHOOLS AS WELL AS ENSURE EQUAL EDUCATIONAL OPPORTUNITY. WE VIEW PUBLIC EDUCATION AS ONE OF THE GREATEST DEMOCRATIZING FORCES IN OUR SOCIETY. IT IS IN PUBLIC SCHOOLS THAT OUR YOUNG PEOPLE BECOME ACQUAINTED WITN OTHER ETHNIC, RACIAL AND SOCIO-ECONOMIC GROUPS AND LEARN TOLERANCE, ACCEPTANCE AND RESPECT FOR OTHERS. IT IS OUR VIEW THAT TUITION TAX CREDITS ARE A THREAT TO PUBLIC EDUCATION IN TWO WAYS.

FIRST, IT WOULD OFFER AN INCENTIVE FOR PARENTS TO SEND THEIR CHILDREN TO PRIVATE AND CHURCH-SPONSORED SCHOOLS, LEAVING PUBLIC SCHOOLS AS THE DEPOSITORY FOR THOSE WHO, EVEN WITH A TAX CREDIT, CANNOT AFFORD A PRIVATE EDUCATION. TUITION TAX CREDITS WOULD CREATE AN EDUCATION CASTE SYSTEM BY DRAWING CHILDREN FROM MIDDLE AND UPPER INCOMES INTO PRIVATE SCHOOLS AND LEAVING THE POOR AND THE EXPENSIVE TO EDUCATE CHILDREN IN PUBLIC SCHOOLS. WE TOTALLY SUPPORT MAINTAINING THIS RIGHT TO CHOOSE A PRIVATE EDUCATION, BUT WE BELIEVE IT SHOULD BE ACCOMPLISHED WITH PRIVATE, NOT PUBLIC FUNDS.

SECONDLY, THIS "TAX EXPENDITURE" TO SUBSIDIZE PRIVATE SCHOOLS WOULD COME AT A TIME WHEN FUNDING FOR PUBLIC EDUCATION IS BEING DRASTICALLY REDUCED. WE BELIEVE IT WOULD BE BETTER PUBLIC POLICY TO DEVOTE THESE FUNDS TO IMPROVEMENT OF OUR PUBLIC SCHOOLS RATHER TO SUBSIDIZING PRIVATE

EDUCATION. THE FEDERAL GOVERNMENT PRESENTLY CONTRIBUTES $58 TO EACH PRIVATE SCHOOL STUDENT THROUGH EXISTING EDUCATION PROGRAMS. S. 2673 WOULD ADD, AFTER 1984, UP TO $500 MORE PER CHILD--$558 FOR EACH PRIVATE SCHOOL STUDENT COMPARED TO THE $160 CURRENTLY EXPENDED BY THE FEDERAL GOVERNMENT FOR STUDENTS ATTENDING PUBLIC SCHOOLS. ACCORDING TO JOHN CHAPOTON, ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY, IN A STATEMENT LAST SEPTEMBER, THIS TUITION TAX CREDIT SCHEME WILL COST NEARLY TWICE AS MUCH AS THE ADMINISTRATION HAS CLAIMED, NEARLY $4½ BILLION, OVER THE FIRST 3 YEARS. THE NAACP URGES THAT THIS $4.5 BILLION BE SPENT ON OUR NATION'S PUBLIC SCHOOLS.

I WOULD ALSO LIKE TO PUT TO REST THE NOTION THAT PARENTS SENDING THEIR CHILDREN TO PRIVATE SCHOOLS ARE SUBJECT TO DUAL TAXATION. ALL TAX-PAYING CITIZENS PAY TAXES TO SUPPORT PUBLIC SCHOOLS, INCLUDING THOSE WITHOUT CHILDREN OR WHOSE CHILDREN ARE ADULTS. TUITION TAX CREDITS WOULD FORCE ALL TAXPAYERS TO SUPPORT BOTH A PRIVATE AND A PUBLIC SCHOOL SYSTEM. THAT WOULD INDEED BE DUAL TAXATION. AGAIN, WE BELIEVE THAT EVERYONE SHOULD HAVE THE CHOICE OF SENDING THEIR CHILDREN TO PRIVATE SCHOOLS, AT THEIR OWN EXPENSE, NOT AT THE EXPENSE OF THE MAJORITY OF TAXPAYERS.

IN SUMMARY, MR. CHAIRMAN, THE NAACP OPPOSES TUITION TAX CREDITS AS AN UNCONSTITUTIONAL VIOLATION OF THE FIRST AMENDMENT AND AS A SERIOUS THREAT TO OUR PUBLIC EDUCATION SYSTEM. WE URGE THE COMMITTEE TO REJECT S. 2673 AND OTHER LEGISLATIVE PROPOSALS TO ENACT TUITION TAX CREDITS. IT IS INCONCEIVABLE TO US THAT WHILE THIS ADMINISTRATION HAS APPLIED A MEAT AXE TO FEDERAL FUNDING FOR PUBLIC EDUCATION PROGRAMS TO REDUCE SO-CALLED UNNECESSARY GOVERNMENT SPENDING, IT, AT THE SAME TIME, PROPOSES A MASSIVE TAX CREDIT, TAX EXPENDITURE, TO SUBSIDIZE PRIVATE EDUCATIONAL

INSTITUTIONS IN VIOLATION OF THE CONSTITUTION. IN ADDITION, WE FIND THE PROVISIONS OF S. 2673 WHICH ATTEMPT TO PREVENT TAX CREDITS FOR TUITION AT DISCRIMINATORY SCHOOLS INADEQUATE AND INEFFECTIVE.

WE APPRECIATE THE OPPORTUNITY TO SHARE OUR VIEWS.

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July 30, 1982

STATEMENT TO THE SENATE FINANCE COMMITTEE ON S. 2673, EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982

The National Council of Jewish Women, an organization founded in 1893, has a membership of 100,000 women located in more than 180 communities across this land. NCJW functions through an integrated program of education, service and social action, locally, nationally and internationally.

The National Council of Jewish Women strongly opposes S. 2673 to provide tuition tax credit, for several reasons. This legislation is in violation of the Constitutional principle of Separation of Church and State. It attempts to weaken the quality of the American public school system, which is the most important duty of government. The bill introduces unsound economic measures and at the same time it creates social inequities.

The National Council of Jewish Women has always been a staunch supporter of public elementary and secondary education, and that traditional position was reaffirmed as recently as March 1981, when the more than 700 delegates at our biennial convention adopted the following resolution:

> "The National Council of Jewish Women believes that a strong system of public education is the best vehicle for maintaining American democracy. Equal access to quality education is a fundamental right for all individuals. We therefore resolve to protect and uphold the constitutional principle of separation of church and state which is basic to our system of public education (and) to ensure that public funds are used only for public education."

The National Council of Jewish Women has always regarded the Constitution as the bedrock in guaranteeing our liberties and therefore believes that no law should erode these protections.

S. 2673 violates the Constitution in that religious schools would be the recipients of federal aid. This tends to advance and foster religion at public expense. The Constitutionality of a law deems that the law must have a secular purpose, have a primary effect that neither inhibits or advances religion, and that it must not lead to "excessive entanglement" of church and state (Lemon vs. Kurtzman, U.S. Supreme Court 403 US 602,625, 1971).

In 1973 the Supreme Court invalidated a New York State tuition tax credit law by reasoning that a tax credit for tuition paid to religious schools is but an indirect method of applying public revenue for private religious uses, prohibited by the First Amendment. (The National Coalition for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).)

The National Council of Jewish Women objects to S. 2673 because we believe that free public education is the cornerstone of American democracy. Public education in the United States has made it possible for the disadvantaged groups - minorities, physically and intellectually handicapped, persons with special needs, to overcome political, social and economic inequities. This democratic system of public education has contributed to fostering productive, economically independent and socially contributing citizens for generations. We cannot put the opportunity for quality education for all children in jeopardy; public policy should encourage the strengthening of funding of public education, not the withdrawing of it. While we support the right of parents to send their children to private schools if they so choose, we oppose any proposal which would divert public funds from public schools to private schools.

We are further concerned that S. 2673 contributes to discrimination on several levels. It discriminates against many low-income families because in order to receive the full allowable credit, a taxpayer must have an income tax liability equal to or exceeding the amount of credit, so that many would not be able to receive this credit although they might have children in non-public schools.

There are no provisions against discrimination by private schools on grounds other than race. It shifts responsibility from the federal government to individuals for policing violations. Enforcement, even of this sole discrimination measure, provides for weak and ineffective penalties.

The National Council of Jewish Women further objects to S. 2673 on economic policy. The proposed legislation will result in a federal revenue loss of multi-billions of dollars per year, with a potential for increased losses in subsequent years. At a time when draconian measures have been taken to cut human services programs, including education programs, the enactment of this legislation would not only increase the budget deficit, but would further fuel the inflation which hurts all citizens, but particularly the old and poor.

NCJW regards S. 2673 as proposed legislation which does not foster sound social or economic policy and we also consider that it would violate, if adopted, the Separation of Church and State principle of the Constitution. We therefore sincerely request that S. 2673 be rejected.

Shirley I. Leviton
President

NSBA
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STATEMENT FOR THE RECORD
on behalf of the
NATIONAL SCHOOL BOARDS ASSOCIATION
on
TUITION TAX CREDITS
Submitted to
COMMITTEE ON FINANCE
U.S. Senate
July 28, 1982

NATIONAL SCHOOL BOARDS ASSOCIATION
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[illegible] school board leadership

The National School Boards Association (NSBA) is pleased to have this opportunity to submit a statement for the record in opposition to S. 2673, ironically entitled "Educational Opportunity and Equity Act of 1982."

NSBA is the only major education organization representing the nation's 95,000 local school board members. These local officials, in turn, are responsible for educating, as well as providing other services to, more than 40 million of the nation's citizens. Currently marking its 43rd year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local control of the legislative authorities and responsibilities and to work for the improvement of education. Since most local school board members are elected, they are directly accountable to their constituents for both public policy and fiscal management. As elected officials, school board members, like other elected officials, address public policy without consideration to professional vested interests.

The National School Boards Association has been unwavering in its opposition to the concept and application of tuition tax credits for elementary and secondary education. In addition to the philosophical objections expressed in our association's policies, NSBA finds that serious arguments and policy questions are raised as a result of S. 2673 with regard to (1) the impact of tuition tax credits on public schools, (2) the economic feasibility of the proposal, and (3) the non-discrimination policies.

I. The Impact of Tuition Tax Credits on Public Schools

Since NSBA's focus is on the future of public education, our reasons for opposing tax credits are based primarily on the argument that tuition tax credits undermine the principles of America's traditional system of universal free public education. S. 2673 would, in effect, be a clear signal that the federal government is turning its back on the nation's public school children.

A. Public Education is Critical to a Democracy

Public education is critical to a democracy and responsible for America's leadership. After all, public education has been a success and the foundation for our country's progress. More than developing a national wealth of leaders, inventors, and scholars, the public schools have educated the people in the values, knowledge and obligations required of a democracy.

The quality of this educational opportunity has been a springboard to participating in other rights in our Democratic society. Whether the right to vote, the right to own property, or the right to employment opportunities are meaningful for all citizens is contingent on a basic quality education provided by our public school systems. As our nation meets the challenges of industrial development, the space age, social equality and reindustrialization, the public schools continue to perform a crucial role. Our free universal public school system has provided more social mobility and a higher general level of education than exists in any other country in the world. Today, over 50% of all high school graduates go on to college. Thirty years ago, the figure was only 25%. Public schools provide a service for society as a whole -- an educated public is in everyone's interest. Accordingly, we feel positive efforts should be made to improve the public schools for the future. S. 2673 would threaten all of this progress.

B. Tax Credits Encourage a Dual School System

The United States is a nation which was founded, and which thrives on, egalitarian principles. The universal right to an equal educational opportunity is fundamental to these egalitarian principles. The federal role over the past fifteen years has attempted to financially assist local school districts in providing for the special high cost services which educationally disadvantaged, handicapped, or limited English-speaking children need to assure their equal educational opportunity.

In reviewing the Administration's overall education request, the federal government is being asked to turn away from its current support of egalitarianism in two respects. First, the Administration has asked for massive budget cuts to programs which fund the equal opportunity of special populations. Second, through tuition tax credits, it is encouraging the creation of a dual school system: i.e., private schools for upper-income children whose parents can afford to pay the cost of tuition in the first place, and public schools for those children who are unacceptable to the private schools and whose parents cannot afford to pay the initial tuition costs or wait the period of time to receive the tuition credit.

It is ironic that S. 2673 is entitled the "Educational Opportunity and Equality Act of 1982." The real effects of this bill, which lacks a refundability provision, would be to provide opportunity for middle and upper-income families who can afford to pay the cost of tuition in the first instance. Lower-income families would not be able to benefit from the credit, even though they may have children in non-public schools, for in order to receive the full allowable credit, a taxpayer must have an income tax liability equal to or exceeding the amount of the credit. Therefore, contrary to the connotation of the "opportunity" and "equality" components of the bill's title, no benefit would accrue to lower-income families who cannot afford to send their children to private schools, and what benefits might be gained would accrue to upper-income families. The ultimate irony, of course, is that the students most in need will receive the least help as a result of S. 2673.

C. Tax Credits Encourage Enrollment Shifts

Tax credits could further undermine public education by encouraging enrollment shifts to private schools. A credit in the amount of $100 the first year ranging to $500 the third year, as suggested in S. 2673, is often a substantial portion of the cost of a private elementary or secondary school. Hence, parents who might otherwise have kept their children in public school might be more likely to take advantage of the tax credit and place their children in private schools. This could accelerate and exacerbate the serious enrollment decline already under way in our public schools.

Another problem enrollment shifts create is the loss of voter support. Local property taxes -- which on the average account for 48% of total school revenues -- are highly sensitive to voter reactions. One reason is that taxpayers do not vote on federal and state budgets and therefore express general anti-tax sentiments through school budget votes. Public schools are the vehicle through which 90% of our children are educated and education is supported by this definable constituency of users. If tuition tax credits attract a significant number of students into private education, voter support for school funding could be very seriously jeopardized. Millions of children in the public schools would be at risk, since it would become increasingly difficult to pass reasonable school budgets.

II. The Economic Feasibility of the Proposal

NSBA has serious concerns about the economic feasibility of a tuition tax credit proposal at this time in our nation's history.

A. Tax Credits Entail a Potential Multi-billion Dollar Revenue Loss

During this time of fiscal restraint, tax credits would entail a potential multi-billion federal expenditure that would exceed the cost of our largest existing federal education program. It is hypocritical and unjust for an administration to slash federal aid for educational programs for disadvantaged students and simultaneously support a tuition tax credit proposal that will result in a multi-billion dollar federal revenue loss. At $100 a tax credit, $490 million would be lost at the elementary and secondary level during the first year; at $300 a credit, $1,596 million would be lost during 1984; and at $500 a credit, $2,224 million would be lost in 1985. NSBA estimates that the total cost of the proposal in revenue loss to the federal government would be about 4.3 billion dollars over the first three years of the program. So, in fact, tuition tax credits would entail a major revenue loss to the federal government. In fact, the reductions in funding for federal education programs reduces federal monies for public education and increases money available for non-public schools.

John Chapoton, Assistant Secretary for Tax Policy, Treasury Department, stated in testimony before the Senate Finance Committee on September 22, 1981 that "Tuition tax credits would be increased to the extent that direct student assistance programs are reduced or private school enrollments or tuitions increase." In essence, the money cut from federal aid to public school students would be used to subsidize private schools. At a time of drastic reductions in federal funding for public education, tuition tax credits would mean that non-public schools would be getting a greater proportion of a smaller amount available. It is unjust for the federal government to provide non-public schools with general aid through tuition tax credits while public schools must vie for what remains.

B. Tax Credits Damage State Funding for Public Education

In addition to the damage tax credits can do at the federal level, tax credits can also potentially damage state funding for public education. Over 40% of school funding is derived from the state level. For the most part, these funds are distributed on the basis of student enrollments in the form of average daily attendance. Therefore, any school district which loses large numbers of students can suffer major revenue losses beyond the savings derived from having to educate fewer children. For example, if a school system loses two students per classroom, the lost revenues would far exceed the costs -- especially since the basic overhead cost of the classroom unit would be unchanged. To the extent that local school districts fund these losses, per pupil costs and local taxes will go up and total school system services will fall. This disruption will most likely mean that state systems of school finance will have to be redesigned. Moreover, school systems with disproportionately greater numbers of children moving into private schools will be dealt a double blow; they would lose the base of local taxpayer support, and in relation to the rest of the schools in the state, financial aid would potentially drop dramatically.

III. The Discrimination Policies

NSBA believes that the non-discrimination features of S. 2673 are inadequate.

A. Sworn Statement

S. 2673 calls for a sworn statement by the institution that it has not followed a racially discriminatory policy. This concept may be unworkable and similar requirements in the past have not led to effective enforcement. Given the myriad demands on U.S. Attorneys' time, it is unreasonable to assume that this provision would be enforced.

B. The 501(c)(3) Exemption Requirement

The bill incorporates existing IRS-declared policy that discriminatory schools are not entitled to exemption. This provision is suspect in that the Congress has already blocked the IRS from promulgating regulations that would have allowed tax-exempt status of the non-public schools. Moreover, in January of 1982, the President decided to terminate the government policy denying tax exemptions to segregated private schools. Clearly, there is no guarantee that there will be enforcement for this provision. Not only do the anti-discrimination mechanisms appear to have little likelihood of being effective, but in addition, there are no provisions against discrimination by private schools on grounds other than race.

IV. Conclusion

Mr. Chairman, NSBA remains committed to the belief that tuition tax credits would have a serious detrimental impact on our universal free public education system. In addition to encouraging a dual school system, tuition tax credits would also encourage enrollment shifts from our already declining public school population to private schools. Moreover, our country cannot afford the multi-billion dollar revenue loss that tuition tax credits would entail. In sum, S. 2673 would have a major detrimental impact on the federal budget and any benefits that would be gained would largely accrue to upper-income families. At a time of drastic reductions in federal funding for public education, tuition tax credits would mean that non-public schools would be getting a larger percentage of a smaller pie. NSBA believes it is unjust for the federal government to provide non-public schools with general aid through tuition tax credits while public schools must vie for what remains.

NOTE: Applicable NSBA Resolutions and NSBA Beliefs and Policies are:

Resolution 2.1.19 Tuition Tax Credits/Vouchers: NSBA is in complete opposition to any proposal by the Congress or the Administration to subsidize elementary or secondary private schools through tax credits and/or vouchers for the parents or guardians of children who are enrolled in such schools.

It is inappropriate to divert public funds to support non-public education, which in part is not regulated and/or controlled in the same manner as the public schools.

NSBA encourages and supports local governing boards in offering the widest possible variety and range of instructional programs to students so that they have a choice of instructional options which best meet their needs and abilities.

In addition, NSBA states that public funds shall be spent for public education and that public education funds should go only to school systems or county school units which have locally elected or appointed boards or trustees directly accountable to the public.

Article I, Section 1.3 Separation of Church and State. The American tradition of the separation of church and state should be safeguarded vigorously. To this end, the Association believes that funds raised by general taxation for educational purposes should be administered by public officials and should not be used to support any privately operated schools. The Association recognizes and upholds the right of any group to establish and maintain schools so long as such schools are financed by their own supporters and are subject to such governmental supervision which assures a minimum standard of instruction and adherence to the Constitution and laws of the United States.

Article IV, Section 2.1 Public Support of Education. In order to improve public education, NSBA urges: (A) support for equitable tax reform; (B) opposition to the use of public revenues for financing non-public elementary and secondary schools; (C) opposition to the use of the voucher system as a method of non-public school financing with public funds; (D) opposition to tax credits for expenditures for tuition or living expenses at any elementary and/or secondary educational institution.

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Office of the Vice President
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TESTIMONY

OF

MAUDINE R. COOPER
VICE PRESIDENT FOR WASHINGTON OPERATIONS

Submitted for the record to the

Senate Finance Committee

on

TUITION TAX CREDIT LEGISLATION

Room 2227
Dirksen Senate Office Building

Friday, July 16, 1982

Testimony of

Maudine R. Cooper
Vice President for Washington Operations
NATIONAL URBAN LEAGUE, INC.

Submitted for the record to the

Senate Finance Committee

on

TUITION TAX CREDIT LEGISLATION

Dirksen Senate Office Building
Room 2227

Friday, July 16, 1982

Mr. Chairman, the National Urban League is pleased to submit its comments for the record on S. 2673, a bill to provide federal tax – subsidies to parents financing their children's private education.

The National Urban League was founded in 1910 as a non-profit community service organization committed to securing full and equal opportunities for blacks the poor and other disadvantaged populations in our society. Working through 117 affiliates in 38 states and the District of Columbia, four Regional Offices and the Office of Washington Operations, the League has a multi-racial staff of more than 3,000 individuals who are trained in organizational management as well as the social and behavioral sciences. The Urban League Movement is reinforced by a cadre of more than 32,000 volunteers.

In submitting our testimony today, the League wishes to address the broader, more fundamental issue which underlies the tuition tax credits debate. That issue, we feel, is the quality and direction of American public education.

Amidst the multiple and sometimes conflicting rationales for promoting tuition tax credits, there is at least one principal area of consensus: that public education is not doing its job. While there are certainly distortions and inaccuracies associated with a generalization such as this, there is also an understandable basis for the position which should not and can not be ignored.

In recent years, public education has come under increasing attack, as charges of loose discipline, drug abuse, declining test scores and declining expectations in general have come to undermine our school's ability to teach. No where has this been more acute than in our turbulent inner cities. In New York, Philadelphia, Boston and other cities, school enrollments have shown a steady decline, as whites and the more affluent families move to the suburbs or seek relief in the now growing supply of private schools. For those who remain behind, the prospects for a quality education are proving difficult at best, and difficult particularly for blacks.

Black people are the most urbanized Americans -- over four out of five black people live in metropolitan regions and over half live in the central cities. Black people are also the poorest of Americans. Half of all black children are growing up in poverty. Typical black family income is barely half that for whites, and the average black family earns less than the U.S. Department of Labor says is necessary for a decent standard of living.

The education these underserved Americans are receiving in our inner-city schools is quite simply a disgrace. In a recent New York Times article, Dr. Paul DeHart Hurd of Stanford claimed that elementary school students, on the average, are receiving only one hour of science and four hours of a math a week. Language study has become virtually non-existent, while homework demands are proving to be increasingly insufficient, writing assignments few and far-between, and reading expectations less thoughtful and critical. On a more immediate and dangerous level, violence and vandalism are in many schools reaching epidemic levels.

A typical inner-city school, Boston's English High School, was recently characterized by the Wall Street Journal as a distracting environment where the fear of crime runs wild. "Such distractions pervade the Boston school system," the article explained, "where concern focuses as much on violence and expenses as on the quality of education. By April 1, weapons had been used in 29 assualts, including one in which a girl was shot and another in which a school store aide was attacked with a razor blade."

As conditions worsen, so too does the quality of teaching. Morale has become a major problem. In Philadelphia, the school system is unable to fill as many as 150 to 200 teacher absentee positions a day, with such apathy breeding a similar reaction among students. Student absenteeism in the inner cities reaches as high as 20 percent.

For Black Americans, public education is proving to be a part of the problem rather than a part of the solution. While gains continue to be made at the elementary levels with programs such as Head Start and Compensatory Education, completion rates continue to reveal the more dismal reality: among all black children between the ages of 14 and 17, one in six is out of school; one black family in four reports that it has had at least one child suspended from school, and for every two black students who graduate from high school, one drops out and is left behind.

In light of these and other disturbing statistics, the National Urban League concurs with those who find the quality of our public schools unacceptable. But for those who identify tuition tax credits as the solution -- or even a partial solution -- we must vehemently disagree.

COST

With the severe budget retrenchments in evidence at both the federal and state level, tax credit funding could clearly lead to zero funding for other, more essential education programs: Head Start, Compensatory Education, and Vocational Education, to name but a few. The recipients of these programs have been the poor and underserved; the recipients of a tuition tax credit would be largely white and middle class.

While the Administration claims that the tax credit legislation would cost only $1.5 billion per year, when fully implemented, this cost estimate assumes that only those already enrolled in private schools will utilize the credit. This assumption contradicts at least two of the essential aims of the legislation: the first to facilitate greater educational diversity through greater access to private education, (especially for those for whom it has been economically prohibitive); the second, to provide a competitive tool that will make public education more responsive and product-oriented. Clearly the Administration can't have it both ways.

A more realistic cost estimate for the tuition tax credit has been made by Dr. David W. Breneman of the Brookings Institution. It has been estimated by Dr. Breneman that probably no more than a million children would make the shift to private schools should a tax credit be made available. If such a number entered the private system, Breneman has written, the amount of lost tax revenues would be approximately $3 billion or $3000 per child. By comparison, current federal outlays per public school student total less than $150 per child.

Dr. Breneman's estimates indicate the limited scope of a tax credit initiative. With almost 90 percent of all elementary and secondary enrollments being public, and not private, the tax credit would weaken, the system that serves the greatest number and those with the greatest needs.

In their support for the tuition tax credit initiative, many have argued that it is unfair for private school parents to be subjected to a double burden -- that is, paying for the public schools through their taxes and for their children's education through tuition. Despite the allure such an argument has had for many of us who face increasingly difficult financial circumstances, the argument is clearly a fallacious one. Our taxes -- everyone's taxes -- have always been used to provide services for the common good. Roads, parks, police and fire protection are among the many common services our tax dollars have financed. If you or I decide not to use the public parks we do not get our tax monies back, nor do we expect a tax credit for using our backyard.

Even if 10 percent of our families are suffering the so-called "double burden," a tuition tax credit would shift that burden to the remaining 90 percent. Under such a plan public school parents would be shouldered with the responsibility of keeping private schools affordable -- surely a ludicrous proposal.

SEGREGATION

While blacks represent almost 16 percent of all public school enrollments, private school enrollment is only 6.4 percent. That figure is not likely to increase significantly under a tuition tax credit initiative. While little more than 20 percent of all public school families have annual income exceeding $25,000, that figure is almost double for private school families. That figure is not likely to change significantly either.

Even with a tuition tax credit, minorities and the economically disadvantaged will continue to be underrepresented for one or all of the following reasons: prohibitive costs (even with the tax break); unacceptable religious affiliations and doctrine; unwillingness of the private schools to serve poor academic performers; unwillingness or inability to serve handicapped children and children with learning disabilities, and unwillingness to serve all racial and ethnic groups.

For minority representation in the private schools to grow by any significant degree, under a tuition tax credit initiative, at least two uncertain and unproven factors would have to be present (not withstanding the impediments listed above). First, the current "supply" of private school admissions would have to increase dramatically. A development such as this, analysts have claimed, would be highly unlikely, given the already extensive waiting lists for many schools, and the already unprofitable nature of private schooling (most private schools are Catholic and heavily subsidized by the church). Second, private schools would have to become far more affordable, and thus refrain from using the credits to raise tuition fees (no such assurance currently exists in the legislation).

CHOICE

For proponents of tuition tax credits, the argument has focused on "choice" rather than segregation. While the League recognizes the freedom of choice as a necessary component in any democratic institution, in education it has too often been a code word for the segregationist and for the privileged. According to a 1981 report issued at a Stanford University seminar on education finance, only with the achievement of greater educational equity came the calls for greater choice. According to the report, "court decisions as well as federal and state legislation have succeeded in challenging racial segregation, religious practices in the schools, and disparities in school expenditures based upon differences in neighborhood and parental wealth. One response has been the [demand] for increasing education choice. . ."

If implemented, tuition tax credits would clearly increase the segregation between rich and poor, and between black and white. As reports have documented, many parents choose private schools for their children in order to avoid large numbers of economically disadvantaged and black students. According to government statistics, white enrollments in northern private schools have increased most significantly in cities with large minority populations. Within this context, "choice" means social and economic segregation.

CIVIL RIGHTS ENFORCEMENT PROVISIONS

The Administration's benign regard for discrimination in private schools was made abundantly clear in their policy flip-flop last January over granting tax-exempt status to such institutions. The long-running front-page coverage of that story documented for the American people just how pervasive segregationist institutions still are in this country. While "only" 100 racially discriminatroy schools were affected by the tax-exempt status case, others could clearly be established and flourish under a tuition tax credit initiative.

This growth would be assured under the Administration's moderate civil rights enforcement provisions, which schools would be able to side-step and otherwise circumvent. In the Administration's tax credit proposal, the burden of proof would rest not with the suspect institution but with the individual complainant. Prosecution would be difficult under a system that protects an already unacceptable status quo.

What makes the status quo unacceptable has been carefully analyzed by William L. Robinson, Director of the Lawyer's Committee for Civil Rights Under Law. According to Robinson, "It is crucial to recognize that just because a school is exempt from taxation under Section 501(c)(3), that does not mean that it does not practice racial discrimination.... Testifying before the Oversight Subcommittee of the House Ways and Means Committee, Jerome Kurtz, Commissioner of the Internal Revenue Service, admitted that enforcement of the Green order [denying tax exempt status] had been ineffective and that present procedures are inadequate to determine whether or not schools holding tax exemptions are actually discriminating on the basis of race.... He testified further that the IRS knows of 20 schools which have been adjudicated to be racially discriminatory by the federal courts which still retain their tax-exempt status."

CONCLUSION

Early supporters of tuition tax credits pointed out with some validity that without financial aid, the very existence of private schools could be threatened. While this wavering status might very well have characterized many private schools in the recent past, statistics now indicate a more positive outlook. Since the early 1970's, private school enrollments have increased, as have the number of private schools. In 1971, there were 17,569 private schools. Today there are over 21,000. As these findings report, private schools are "holding their own." The quality education they provide is not being undermined, and certainly no bail-out is required.

On the other side of the ledger, however, public education continues to undergo an increasingly severe retrenchment. In Boston, bankruptcy forced the schools to close--and reopen only by a court order which instructed the City of Boston to appropriate money which didn't exist. In Prince George's County, Maryland, 450 teachers were recently laid off; and in recession-torn Michigan, teacher layoffs and school closings are now leaving an entire generation underserved and ignored.

At the federal level, virtually every education program has been cut, including the largest program, Compensatory Education, which provides remedial reading and math training to low-income and disadvantaged students. In less than two years time, that budget has fallen from $3.48 billion to $1.9 billion -- the figure now recommended by the Administration. Under the previous funding level, only 45 percent of eligible children received services; a mere 27 percent would be enrolled under the Administration's funding recommendation.

If billions of dollars are allowed to be channeled to private education, the interest in public education will decline further. For those who remain trapped in an unwanted system, the future will be very bleak indeed. Because those left behind will not be a minority but a majority, the future of our country could prove equally as bleak.

For public education to be improved in this country, what will be required is commitment and involvement. Sufficient funding will of course be essential, but if those who care the most are taken out of the system, any hope for improvement will surely be dashed.

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njea

STATEMENT ON Tuition Tax Credits of the New Jersey Education Assn., Dr. James P. Connerton, Executive director, Edithe A. Fulton, president, for the United States Senate Finance Committee, July 28, 1982.

NJEA STATEMENT ON TUITION TAX CREDITS

The New Jersey Education Assn.'s position on matters such as tuition tax credits has been fundamentally the same for all of its 129-year history. The Association believes that public funds should be spent only for public schools.

In our system of government, education is primarily an obligation of the states. Each state has set up a system of public education to meet the needs of its residents. Groups who, for a variety of reasons, have not sent their children to public schools, have set up private schools. That is their right. But it is not their right to have all taxpayers subsidize their choice.

The government has a basic obligation to offer education to all children. The government has met that obligation by providing a comprehensive system of public schools. Some of these schools are not performing as well as others. The government's response to this should not be to encourage parents to boycott these schools, but to make the needed improvements. This is where government should target its funds.

Proponents of tuition tax credits argue that many urban school systems are substandard. It is true that many urban children go to schools badly in need of repair, are forced to use outdated textbooks, and have few supplies. But this is so because decades of neglect by the government have left these schools in poor condition. The answer is not for the government to subsidize competing institutions; this would only further weaken the weakest of the public schools. The answer is for states, with federal help, to bring poor schools up to par.

Public schools must take almost all children. Public schools must also pay for those children who are so severely handicapped they must be educated in private facilities. Private schools don't. Public schools can expel students only in extremely rare circumstances. Public schools must take students of all races, creeds, colors and national origins. Private schools can pick and choose among students.

Public schools exist to serve all students. Private schools exist for those who want their children educated for a specific religion, or for those wealthy enough to send their children to school under more ideal circumstances than most public schools, or for those who don't want their children to mix with the public schools children in their area.

Ironically, many of the advocates of tuition tax credits are people who feel that government action is almost never called for in the normal course of affairs. Yet they are advocating government subsidy on a massive scale of what is quintessentially a private choice.

NJEA believes passionately in the right of free choice. But NJEA believes just as passionately that the government should not subsidize institutions which compete with the government's own democratically-run institutions. Those who are dissatisfied with the public schools can lobby to make them better. They can run for local school boards to try to improve local schools.

Tuition tax credits will further fragment the government's "policy" on education. If, as some people wish, there was a complete free market in education, inefficiencies of a giant scale would arise.

Government subsidy of private schools would encourage more and more people to set up such schools. The quality and purpose of these schools would vary greatly. How would the government differentiate among schools? Would any private school qualify for the tax credit? Would it become simply a case of "buyer beware" for parents choosing an education for their children? Wouldn't more government regulation and bureaucracy develop?

In fact, we would probably see quick-buck artists positioning themselves for a share of government dollars. This sort of huckersterism would harm children in the long run. Indeed, it would hurt all of us. We would wind up subsidizing a wide variety of private schools, some good, some bad, some for the wealthy, some for the poor, but all almost completely beyond the ability of government to affect the quality of education.

Some will say this is good. In New Jersey, we have just seen the effect of private schooling subsidized by public funds. A public county agency subcontracted to a private group to provide certain educational services. The owner of the private group drove expensive cars, hired relatives and friends for questionable reasons, and generally lived extremely well, but the educational services contracted for were either not provided or provided poorly. Teachers in the program received checks that bounced. Students were cheated of expected services.

All of this occurred because of insufficient government controls. NJEA opposed the subcontract arrangement, but the county agency, seeking a cheap fix for their problems, went ahead anyway. The scandal ensued.

This could occur on a grand scale if tuition tax credits became law.

Tuition tax credits would add to the federal deficit. At a time when the administration says it is trying to get spending under control, this plan would add billions to the deficit. It makes no fiscal sense to do this.

The benefits of the credit would be short-lived. Private schools would probably increase tuitions to take advantage of the credit, and the credit would be used up. What then -- increase the credit? Clearly, this is another entitlement program which could easily get out of hand.

Private-school students already receive federal aid for specific services. If this credit becomes law, private-school students could receive as much as $560 per student from the federal government, as opposed to about $150 per public school student. How can this be justified?

In sum, the concept of tuition tax credits is divisive, economically unsound, and educationally unwise. The idea should be abandoned. The federal government should concentrate instead on increasing aid to public schools, especially those with special needs.

NJEA is unalterably opposed to tuition tax credits and will vigorously oppose all efforts by the government to institute such credits. Society would break down even more than it already has.

Public schools have been one of the forces most responsible for bringing people together. From the beginnings of the movement toward free universal public education in America, the intent of government has been to provide education for all, not only to transmit knowledge of the alphabet, numbers and the like, but to transmit the ideals of this democracy. Weakening public education by subsidizing private schools will break down this sturdy fabric built up over the course of generations.

Make no mistake. If these credits become law, taxpayers will wind up subsidizing Catholic schools, Hebrew schools, Black Muslim schools, Ku Klux Klan schools, Sun Moon schools, and dozens of other schools set up for specific purposes. And passage of such credits could ultimately lead to battles similar to the rights battles of the 1960s, as children try to enter schools where they are not of the same faith or color or national origin, or have some other difference which those who set up the schools would rather not have in existence.

STATEMENT OF J. M. HUNTER

SUMMARY OF POINTS

Points

1. The Supreme Court through a series of decisions has established the Parent's Duty to educate the child. Absent accurate records and that intent is destoyed.

2. There presently is no state laws guaranteeing the Public School student or the Parent an accurate record and/or reports.

3. State laws covering Private schools are far stricter than those covering Public schools.

4. The Parental arrangement with a Private school is a Contract and therefore subject to TORT.

5. Tuition tax credit does not impact State funding of Public Schools because it is an Income tax provision not a real estate tax provision.

Thank you for this opportunity to bring to your attention a number of little known facts concerning parents and their children's education.

In a series of major decisions, the U.S. Supreme Court has ruled that the guarantee of liberty contained in the 14th Amendment due process clause insures the right of the parent to control the upbringing and education of the child. (Meyer v. Nebraska 262 U.S. 390(1923)) and for the child to acquire useful knowledge (262 U.S. at 399). In 406 U.S. 205 the court recognized the DUTY of the parent to provide for the educational upbring of the child. The States[1] have basically agreed.

It is unlikely that the Court would define a fundamental right on the one hand and then permit the schools to frustrate it by denying the means (accurate records, report cards, etc.) essential to its exercise on the other.

Yet there does not exist any enforceable law or regulation protecting the Student's records from the deeds, right or wrong, of the Public schoool personnel. Records can be falsified, forged, rendered inaccurate, misleading or otherwise in violation of the Student's civil right under CFR 45 (the Buckley Amendment) by public school system personnel without fear of this Law. This law commonly known as 'FERPA' provided for a formal hearing process. When as a result of that process the institution finds that the records in question are inaccurate, misleading, etc., the law states that the institution "Shall amend the records". Upon refusal to do so the Secretary, Department of Education, shall, through well defined procedure, move to freeze all Federal funding under his control that is earmarked for that System. In our case the Department of Education (DOE) refuses to enforce the law. Complaints to the President and subsequently to the Department of Justice (DOJ) are equally fruitless.

The Public School system defends in Civil Court based on a celebrated case Peter W. which argues -

> -No matter what damage is visited upon the child by the system that system can not be sued because it does not have the means to raise money (i.e., taxing authority).-

So far the Public School system, while admitting that the records are inaccurate, misleading, etc., cannot be brought to justice in civil court because of 'Peter W.'. Further, our Son, now about to apply to Graduate school this fall must do so with false, incorrect records.

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[1] For example, FINOT v. Pasadena City, Bd. of Ed. 58 Cal. Rptr. 520; 250 C.A. 2nd 226 (1967) and Dickens v. Ernest, 37 A.D. 2nd 102, 322 N.Y. S. 2nd 581 (1971).

The Maryland Court of Appeals after a ten-year effort tends to agree with Peter W. but where Malice (disregard for the welfare of the child) exists, has remanded the civil claim to the Circuit Court to be heard against the individuals but maybe not the school system . This effort has consumed what would normally be our life savings after 26 years as a family. Parents need an alternative.

Private schools, separating out all the other favorable academic arguments, are forced to operate on much stricter standards by State laws. More important Private school provides its service under CONTRACT and is therefore subject to the laws of TORT. Passage of the Tuition Tax Credit Bill is a most significant step forward for both the Parents and the students. Greater use of Private schools will help to control performance, improve the ratio of Public School Teachers to Students will significantly lowering the administrative burden or cost to the Public School system. Equally important is the fact that passage of this bill will not impact the funding of the Public schools because this is an Income tax provision whereas the Public schools are funded by Real Estate tax revenues.

Thank you. I would be pleased to answer any questions on these points.

REPLY TO WASHINGTON ADDRESS

July 23, 1982

The Honorable Robert Dole
United States Senate
Washington, DC 20510

Dear Senator Dole:

The Office for Church in Society, a national instrumentality of the United Church of Christ responsible for influencing national policy in accordance with policy formulations in the denomination, is opposed to Congressional attempts to provide tuition tax credits to parents whose children attend nonpublic schools. Opposition is based on two considerations: that such a policy would violate the principle of separation of church and state since the great majority of nonpublic schools are parochial schools, and, that providing tuition tax credits would put the government in the position of supporting institutions that are discriminatory not only on religious grounds but on racial, economic and social grounds as well.

The position of the United Church of Christ articulated by its social action arm more than twenty years ago recognized that there were "pressures to secure public monies for the support of parochial schools and actions designed to preserve racial segregation by providing public support for private schools." (Quotes are taken from UCC Policy Statements, the Crisis in Education [Jan. 31, 1959] and Our Christian Concern for Public Education [Feb 5, 1959]).

That policy went on to state that, "We recognize the right of any religious or other group to conduct private schools at its own expense provided these schools meet accepted standards. We oppose gifts to private schools from public funds for construction, maintenance, teachers' salaries or other regular institutional expense."

Nothing in the legislation introduced by President Reagan on June 23 or previous legislation on tuition tax credits sponsored by Senator Packwood and Senator Moynihan changes the fundamental conviction of this Office that such legislation violates the principle of separation of church and state as well as fosters a public policy to support discriminatory institutions.

This Office challenges the notion that tuition tax assistance recognizes pluralism in American society and would create diversity in the educational process. A tuition tax credit policy would actually promote the divergency of interests of the pluralistic groups in American society and promote educational institutions appealing to a particular group because of religious faith, economic class or ethnic membership. Rather than create or promote diversity in the educational process, such a policy would allow another educational system supported by public monies. The public system would be allowed to decline while an alternative system would flourish of an ever increasing number of homogenous schools.

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YVONNE V. DELK
Executive Director

JOHN M. ROGERS
Chairperson

This Office is not against the rights of parents to educate their children as they see fit in an institution of their choosing, but there is no reason for government policy to promote and encourage such a development. Rather than the provision of quality education for all school children, tuition tax credits would ultimately encourage the withdrawal of resources and promote the lack of commitment to erase discriminatory tendencies in institutions such as schools.

The continued assertion that tuition tax credits would spur the improvement of public educational school systems is difficult to substantiate. Rather than providing competition we believe it would spur the downfall of public education as government responsibilities shift away from support of the system to support of individual taxpayers. Families would shift attention and support away from the public school system, and create further disintegration of public schools. Tuition tax credits would increase the opportunity of families to move their children out of the public school system rather than working to support and maintain a quality of education available to all students.

It is also unnecessary in our view to promote a tax policy designed to lighten the burden of families who choose to send their children to private schools. It is a choice individual families have made to use a nonpublic service. If individuals choose a nonpublic service, government does not somehow have the responsibility to subsidize the use of that nonpublic service for those who so choose to use it. Government should continue to support and maintain the quality of the public service for those who are users.

UCC policy states that "members of churches must help strengthen public schools by opposing efforts to use the public schools or tax funds to advance sectarian religious aims." Furthermore, our position is "we pledge our efforts to strengthen the system of public education for the full development of the capacities of our children and for the enrichment of our common life."

This office respectfully requests that you submit this letter for the record.

Sincerely,

Yvonne Dell

Yvonne Delk
Executive Director
Office for Church in Society
United Church of Christ

YD/cm

the voice of reason

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16 July 1982

STATEMENT OF: EDD DOERR, EXECUTIVE DIRECTOR, THE VOICE OF REASON

TO: SENATE FINANCE COMMITTEE

SUBJECT: S.2673, FEDERAL TUITION TAX CREDITS

Mr Chairman and Members of the Committee:

The Voice of Reason is a nationwide nondenominational public interest educational organization committed to defending our nation's heritage of religious and intellectual freedom, democratic public education, and separation of church and state. We strongly oppose S.2673 on the grounds that it would be unconstitutional, uneconomical, harmful to both public and private education, educationally unsound, and socially divisive.

Before listing our objections to the substance of S.2673, we would like to challenge the unfounded assertions in the bill's section on "Congressional Findings".

This bill speaks of promoting educational pluralism and diversity. Yet our public schools, with their rich mix of students and teachers of every creed, race, class, condition, and shade of opinion surely provide students with more pluralism and diversity than would the vast majority of nonpublic schools, in which creed, class, ideology, ability level, and other factors are commonly used in selecting students and teachers. The tendency toward creedal and other forms of homogeneity in most nonpublic schools moves in the opposite direction from pluralism. Moreover, if there is demand for alternative modes of education, all of those which merit public support and are not currently being offered in public schools, can be offered in our existing public school systems.

The bill's preamble speaks of tuition tax credits as tending to strengthen public education through competition. Yet public and nonpublic schools really do not compete in any way that may properly be encouraged by public funding. Public schools may not discriminate, either in admitting students or in hiring teachers, along religious, class, gender, or ability level lines, though nonpublic schools commonly do so. Sectarian private schools, which account for about nine tenths of nonpublic enrollment, do not compete across creedal lines. Finally, if there may be said to be meaningful competition between public and nonpublic schools, it is a competition in which the selective nature of the private schools gives them a significant and unfair advantage.

S.2673 does seem to oppose the use of federal funds for schools with racially discriminatory policies, but the bill provides no effective machinery for barring the use of tax credits for the aid of schools which practice de facto racial discrimination. And the bill does not even pay lip service to discouraging any of the other types of discrimination -- creedal, ability level, gender, etc -- common in nonpublic schools.

S,2673's "findings" allude to tuition tax credits as necessary to enable poorer parents to opt for nonpublic schools. Yet the bill offers nothing whatever to families who pay too little in federal income taxes to benefit from the bill.

The bill speaks of "extending choice" in education. Yet even under a tax credit scheme the right of parents to choose a particular nonpublic school for their child is always subordinate to the private school's right to choose not to admit their child because he is not of the right faith, because the parents are not active enough in the church, or because the child is handicapped or not capable of fitting into a rigorous college prep program.

Having seen that the preamble to this bill is little more than empty sales propaganda, we would like to outline our principal objections to this bill or any likely variant of it.

S. 2673 is clearly unconstitutional, under the Supreme Court's 1973 opinion in PEARL v. Nyquist (413 U.S. 756). Although Section 6 of the bill tries to evade the weight of this ruling by asserting that the "tax credits ... shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits," (who, pray tell, would be the beneficiaries of the bill?) the Nyquist Court clearly understood such legislative sleight-of-hand and concluded that, "the money involved represents a charge made upon the state for the purpose of religious education." Thus, the Court added, such an enactment has the constitutionally "impermissible effect of advancing the sectarian activities of religious schools." Nothing in S.2673 would give the Supreme Court any reason to reverse or modify Nyquist.

S.2673 would favor the affluent over the poor. According to the Census Bureau, 41% of public school families have incomes below $15,000, while only 20.18% of nonpublic school families are below that level; 54.4% of nonpublic school families have incomes over $20,000, compared to 35.17% of public school families. Further, the Administration is promoting this tax credit program, which will cost about $2.5 billion annually when fully implemented, while at the same time slashing a similar amount of money from existing federal aid to education programs which are targeted at poor and needy children concentrated mainly in public schools. Do the authors of the Administration's education policy really want to help the relatively affluent at the expense of the poorest and neediest of our children?

S.2673 would increase social divisiveness. Nonpublic schools tend to be religiously homogeneous, to serve more affluent families than public schools, to enroll proportionately fewer minority children than public schools, to be academically selective, and to provide only rarely for handicapped children. Tax credits would use public funds to divide children along creedal, class, ethnic, academic ability level, and other lines. These divisions would in turn exacerbate the divisions in our society as a whole, weakening both social harmony and democratic government.

S.2673 would harm public education by rewarding middle class parents for abandoning public schools. This process would tend to skew public school enrollments toward ever higher concentrations of poor, minority, handicapped, lower academic ability level, and problem children, thus further enhancing the "competitive" attraction of selective nonpublic schools.

S.2673 is educationally unsound because it would provide federal subsidy and encouragement for the various forms of indoctrination or sectarian instruction which are common in nonpublic schools but prohibited in public schools.

S.2673 is undemocratic. We the people and taxpayers of America run our 16,000 local public school districts through local school boards responsible to the parents and taxpayers and voters of the district. This bill would give American voters and taxpayers no voice whatever in the running of the private schools which our federal tax dollars would be supporting. This would surely be a case of taxation without representation.

S.2673 would be extremely costly. Since there are about five million students in nonpublic schools, after its two year phase-in period S.2673 would cost the federal treasury, and consequently all American taxpayers, about $2.5 billion annually. (Needless to say, private schools now charging less than $1,000 tuition annually would be foolish not to raise tuition to take maximum advantage of the tax credit plan.) And in the unlikely event that S.2673 should somehow survive judicial scrutiny, it is obvious that Congress would face endless pressure to increase the amount and percentage of tuition reimbursed to reach the average per student spending levels of public schools. Moreover, successful enactment of S.2673 would encourage state and local governments to provide similar tuition tax credits for parochial and private school enrollment. Even if nonpublic enrollment stabilized at five million and educational costs would cease to rise, the logical expansion of the tuition tax credit plan to parity with public school spending per student would lead to an annual federal tax expenditure for nonpublic education of at least $12.5 billion per year. But it should be obvious that even mild public subsidy of nonpublic education under S.2673 would encourage the proliferation of ideology oriented private schools and the consequent decline in educational economies of scale.

S.2673 will harm nonpublic schools and the churches which sponsor most of them by making them dangerously dependent upon government instead of the sacrificial giving of their own members, and by thrusting them ever further into the political arena to defend their financial gains. The evidence of history is that churches are weakened by alliance with and dependence upon government.

Finally, tuition tax credits are strongly opposed by public opinion. In the country's only referendum test of the plan, in the District of Columbia in 1981, the plan was defeated 89% to 11% in an unusually heavy voter turnout. In 11 other statewide referenda since 1967, voters in New York, Oregon, Maryland, Nebraska, Idaho, Missouri, Washington State, Alaska, and Michigan consistently defeated all proposals to allow public aid for nonpublic schools.

Constituent opinion polls by members of Congress in the last four years have also registered strong opposition to the plan: Rep. Newton Steers (R-Md), 64% to 30%; Rep. Bill Frenzel (R-Minn), 74.4% to 25.6%; Rep. Ralph Regula (R-Oh), 58% to 42%; Rep. Joel Pritchard (R-Wash), 66.3% to 33.7%; Rep. Robert McClory (R-Ill), 56% to 44%; Rep. Pat Williams (D-Mont), 60% to 40%; Rep. Phil Sharp (D-Ind), 71% to 29%.

In 1978 both a Roper poll and one done by William Rusher's Advocates TV show found 64% of their national samples opposed. In 1981 both Gallup-Newsweek and ABC News-Washington Post showed opposition running 60% to 40%. In 1982 an IMR-Opinion Research poll in Iowa showed opposition at 55% to 36%.

In conclusion, we respectfully urge that S.2673 be tabled in committee. The case for it is very weak, the case against it very strong. If the Administration really wishes to provide financial aid to nonpublic schools, it should show the courage of its convictions and propose an amendment to the Constitution to weaken the establishment of religion clause of the First Amendment.

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July 6, 1982
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Statement concerning S. 2673, the tuition tax credit proposal

Although I attended an expensive private secondary school, and hope to send my children to such a school, I believe that principle must rise above self interest in the matter of the proposed tuition tax credit. I urge the members of the committee to recognize the results the proposal would have if enacted, rather than deceiving themselves with rhetoric about equitable treatment for parents of private school children, and about measures to prevent racially discriminatory results.

Because the measure is only a partial credit, it will remain available only to parents with enough money to pay most of the cost of private schooling. It will therefore simply favor the relatively privileged and will do nothing for the majority, i.e, the economic middle class and below. Considered together with evident losses in funding for public education, which are plainly occurring on the federal and most state levels as voters refuse to allow themselves to be taxed for this essential service, the real result of the proposal is to protect and indeed subsidize the educational opportunities of the wealthiest, privileged families, while the rest of population experiences a continuing decline in the quality of education.

There is another segment of society that will benefit, reaching a somewhat more comprehensive portion of the middle class, and that is the families using parochial schools. The tuition tax credit will, in result if not in stated intent, subsidize religious education in this country at public expense; whether the credit will be found unconstitutional on this ground remains to be seen, but the violation of the spirit of the constitutional separation of church and state cannot be denied. I would hope that the members of the committee, and indeed any public representative in this country, would see the virtue of the separation of church and state and would devote efforts to upholding it, rather than seeking to undermine it as an unstated but unmistakable result of proposed legislation.

The proposed tuition tax credit is a cruel effort by the powerful and privileged in this country, who now are all too well represented in the Congress and the Administration, to abuse their duty to represent all the people by voting to confer benefits exclusively to themselves, while the rest of the population sinks beneath them with the foundering public education system.

I urge that you firmly reject S. 2673 and the thinking behind it.

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